Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 74-1585

In the

# Supreme Court of the United States

OCTOBER TERM, 1974

47TH AND STATE CURRENCY EXCHANGE, INC.,
an Illinois corporation,

*Plaintiff-Appellant,*

*vs.*

B. COLEMAN CORPORATION,
an Illinois corporation,

*Defendant-Appellee.*

## JURISDICTIONAL STATEMENT PURSUANT TO RULE 15 OF THE UNITED STATES SUPREME COURT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

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***No.***

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47TH AND STATE CURRENCY EXCHANGE, INC.,
an Illinois corporation,

*Plaintiff-Appellant,*

*vs.*

B. COLEMAN CORPORATION,
an Illinois corporation,

*Defendant-Appellee.*

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## JURISDICTIONAL STATEMENT PURSUANT TO RULE 15 OF THE UNITED STATES SUPREME COURT

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*To The Justices Of The Supreme Court Of The United States:*

B. COLEMAN CORPORATION, an Illinois corporation, Appellant, pursuant to 28 U.S.C., Sec. 1257, has appealed from the Order entered on the 29th day of January, 1975, vacating the Stay Order of the Appellate Court for the First District, and from the Order entered May 14, 1975 denying Appellant's Motion to Recall the Mandate issued April 4, 1975, and to correct the language of the mandate to conform to the Order of January 29, 1975, pursuant to Ill. Rev. Stat. 1971, Ch. 69, Sec. 3 and 3-1 establishing the duration of a temporary restraining order.

## GROUNDS ON WHICH JURISDICTION OF SUPREME COURT IS INVOKED.

(a) The Decision of the Illinois Supreme Court in this case has not been officially reported. The Order entered on January 29, 1975 is attached hereto in lieu thereof. See Appellant's Exhibit A attached hereto.

(b) The basis of this Appeal to the Supreme Court of the United States is pursuant to 28 U.S.C., Sec. 1257. The Supreme Court of Illinois, contrary to Ill. Rev. Stat. 1971, Ch. 69 sec. 3 and 3-1, issued its mandate that the temporary restraining order that was issued on the 29th day of October, 1974 was in full force and effect.

## QUESTIONS PRESENTED ON APPEAL

The validity of the State Statute in question (the Injunction Act) is Ch. 69, Sec. 3-1.

"No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; *and shall expire by its terms within such time after entry, not to exceed 10 days,* as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period."



28 U.S.C., Sec. 1257 states:

"State courts—Appeal—Certiorari.—Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. (June 25, 1948, c. 646, § 62 Stat. 929.)"

## STATEMENT OF THE CASE.

(i) The proceeding was originally instituted by the 47TH AND STATE CURRENCY EXCHANGE, INC., a licensee under Ch. 16 ½, Sec. 31, which alleged that Appellant was conducting a currency exchange without a license.

That when the application was made for the issuance of an injunction, Appellee failed to disclose to the court that Appellant was an agent of AMERICAN EXPRESS and an agent of TRAVELERS EXPRESS. Based on the false representations, the court entered a temporary injunction order without bond, and without notice.

When Appellant was apprised of the issuance of the temporary injunction order, it filed a petition to vacate the stay order, which was granted, and a temporary restraining order was issued without an evidentiary hearing, copy of which is attached hereto.

Appellant then obtained a stay order from the Appellate Court of Illinois. Subsequently, Appellee moved for an emergency hearing before the Supreme Court, which was granted.

The order of the Supreme Court, which is attached, remands the case to be heard on the merits and finds that the Appellate Court erred in vacating the temporary stay order of the Trial Court.

In the oral argument that took place before the Supreme Court, the justices questioned the advisibility of issuing the stay order by the Appellate Court since it was a temporary restraining order which automatically became moot, terminated or died at the end of the ten day period. (This is similar to the Federal Rules of Civil Procedure.)

The right of the Supreme Court under 28 U.S.C., sec. 1257 to determine the validity of an Illinois temporary injunction where it applied a more rigorous standard in issuing and sustaining the temporary restraining order is upheld in the case of *Organization for a Better Austin* v. *O'Keefe*, 402 U.S. 415, 29 L. Ed. 2nd.

The temporary restraining order in the case at bar rests on a disputed question of fact, namely, does the mere cashing of a check place Appellant in the category of a currency exchange.

Any extension of a temporary restraining order can only be granted by a specific order of Court. Other than



that, the restraining order ceases or dies after the tenth day of its issuance. There is no exception to that provision of the Ill. Rev. Stat. that automatically extends the time of a temporary restraining order beyond the ten day period. That to permit a temporary restraining order to remain in full force and effect beyond the ten day period is, in this instance, a violation of Appellant's rights under the 1st and 14th Amendments to the Constitution of the United States.

That the language of the mandate places Appellant and its officers in jeopardy of a contempt citation of conducting the business for which it was specifically licensed by the Director of Financial Institutions of the State of Illinois with a specific license to sell traveler's checks of American Express and money orders of Travelers Express and to perform all acts incidental thereto. The temporary restraining order prohibits Appellant from cashing a check in connection with the sale of a money order. Copy of the Temporary Restraining Order issued the 29th day of October, 1974 is attached as Appellant's Exhibit B.

The proceeding was originally instituted by the 47TH AND STATE CURRENCY EXCHANGE, INC., a licensee under Ch. 16-½, Sec. 31, which alleged that Appellant was conducting a currency exchange without a license.

That when the application was made for the issuance of an injunction, Appellee failed to disclose to the Court that Appellant was an agent of American Express and an agent of Travelers Express. Based on those false representations, the Court entered a temporary injunction order without bond, and without notice.

When Appellant was apprised of the issuance of the temporary injunction order, it filed a petition to vacate

the temporary injunction order, which was granted, and a temporary restraining order was issued. (See Exhibit B).

Appellant then obtained a stay order from the Appellate Court of Illinois. Subsequently, Appellee moved for an emergency hearing before the Supreme Court of Illinois, which was granted.

The order of the Supreme Court which is attached, remands the case to be heard on the merits, and finds that the Appellate Court erred in vacating the temporary restraining order of the trial Court.

That order of the Supreme Court of Illinois is erroneous since it is a well established law in Illinois that "*a temporary restraining order can not decide controverted facts or merits of a case.*"

The temporary restraining order that was granted by the trial Court was issued without an evidentiary hearing being held.

When oral argument took place before the Supreme Court of Illinois, the Justices questioned the advisibility of the Appellate Court issuing the stay order, since it was a temporary restraining order which automatically ceased, became moot or died at the end of the ten-day period.

The entire controversy centers around the interpretation of the Currency Exchange Act, Ch. 16-½, Sec. 31, Ill. Rev. Stat., which controls the "issuance of exchange" at one location, and Ch. 16-½, sec. 301 (Sale of Exchange Act), which controls the "issuance of exchange" at multi locations.



The Sale of Exchange Act, sec. 301 specifically recites:

> "That the business of selling or issuing such instruments at multiple locations through agents, subagents, or representatives is a business which affects the public interest *and which is not presently subject to regulation, although businesses which sell or issue such instruments at a single location are licensed and regulated*[1] under 'An Act in relation to the regulation of community currency exchanges and the operators and employees thereof, and to make an appropriation therefor' approved June 30, 1943, as amended."

That the Sale of Exchange Act was adopted in 1957, whereas the Currency Exchange Act was adopted in 1943. It is quite obvious that since the Sale of Exchange Act specifically recites *that the sellers of exchange at multi locations, until the adoption of that act, were not controlled,*[1] it can not be implied by any means of the imagination that the Currency Exchange Act was intended to govern the sellers of exchange at multi locations. (Sellers of money orders as agents of American Express, Travelers Express, etc.)

The affirmance of the restraining order by the Supreme Court, contrary to the provisions of the Injunction Act of the State of Illinois, Ch. 69, sec. 3-1, has the effect of forcing Appellant out of business when the question of whether Appellant is operating a currency exchange is a controverted fact, in addition to placing Appellant in the position of being in violation of a restraining order that is being construed as a permanent injunction order, even though that decision is contrary to the established law of Illinois.

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[1] Emphasis ours.

The 1967 revision of the Injunction Act, Ill. Rev. Stat. 1971, Ch. 69, Sec. 3 and 3-1, establishes the duration of a temporary restraining order (ten days). If the trial Court intended to enter a preliminary injunction, it was necessary to hold an evidentiary hearing, but no hearing was held in this case.

This proposition was upheld in the case entitled *Paddington Corp.* v. *Foremost Sales, Inc.*, 13 Ill. App. 3rd 175. The Court said:

> "However, such a temporary restraining order was not entered in the instant case. The terms of the injunction restraining defendants 'until such time as this case can be heard on the merits * * *,' exceeds the proper duration of a temporary restraining order. If the trial court intended to enter a preliminary injunction it was necessary to hold an evidentiary hearing. Since no hearing was held the entry of this type of injunction was error."

In the case of *Bohn Aluminum & Brass Co.* v. *Barker*, 3 Ill.App. 3d 600 (1972) the Court held:

> "A temporary restraining order under par. 3-1 '* * * shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period.' This same section also provides: 'In case a temporary restraining order is granted without notice, the motion for a preliminary injuntcion shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtains the temporary restraining order shall proceed with the application



> for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order * * *.' Thus, where there is a temporary restraining order, it is but a preliminary to the hearing on a temporary or preliminary injunction and unless the one who obtains the temporary restraining order proceeds with the application for preliminary injunction, the court shall dissolve the temporary restraining order. The temporary restraining order may likewise be dissolved by the court after hearing on two days notice to the party who obtained it without notice. A clear reading of these provisions indicates that a temporary restraining order without notice is nothing more than a preliminary order of court and it is the temporary or permanent injunction which is appealable under Rule 307. In concluding that we do not deal with an appealable order in this case, we are aided by the following statement in Am.Jur. 2d, Vol. 42, p. 1153: 'While some statutes permit an appeal from an order granting or denying a temporary injunction, a temporary restraining order is to be distinguished from a temporary injunction, and the statute does not furnish the basis for an appeal from an order relating to a temporary restraining order.' Also, in 19 ALR3d, p. 409, the following is stated: 'An order granting or continuing a temporary restraining order is, on its face, interlocutory in nature, since there remains pending a determination of the applicant's right to temporary or permanent injunctive relief, and the majority of cases in which the point has been discussed support or recognize the rule that ordinarily no appeal lies from an order granting, continuing, or refusing to dissolve a temporary restraining order or its equivalent. Such orders, without more, do not satisfy statutes or rules defining finality for the purpose of appeal; and a number of cases have held that a statutory provision or rule permitting an appeal from an interlocutory order relating to a temporary or permanent injunction has no applica-

tion to orders dealing with temporary restraining orders.'"

Appellant's contention is that the restraining order entered by the Honorable Daniel Covelli is moot, and this is further supported by the decision of *Buckingham Corp.* v. *Vesolowski,* 17 Ill. App. 3d, 61.

> "An injunctive order was entered on January 18, 1972, which was effective to January 24th. On that date it was extended to February 3rd; on February 3rd it was extended until February 8th; on February 8th it was extended to February 24th, then it was extended once more to March 10, 1972. On March 9th the Vesolowskis filed an interlocutory appeal from the orders of January 18, January 24, February 3, February 8 and February 24."

The defendants in the *Buckingham* case prayed that the five successive injunctional orders be dissolved and reversed. The points advanced in support thereof were:

1. The trial court erred in not holding an evidentiary hearing before issuing the January 18, 1972, injunction.
2. The order granting the injunction was defective.
3. The petition for the injunction was not properly verified.
4. The consent decree of October 21, 1971, provided that a permanent injunction could issue against the Vesolowskis if they again violated the fair-trade contract, but Buckingham applied for, and received a temporary injunction."

The Opinion of the Court is as follows:

> "One of the cases cited in support of this argument is *Bohn Aluminum & Brass Co.* v. *Barker* (1972), 3 Ill.App.3d 600, 278 N.E.2d 247. Leave to appeal was granted in the *Bohn* case and it was reversed. (55



Ill. 2d 177, 303 N.E. 2d 1 (1973). The Supreme Court held that for the purposes of appeal there is no distinction between a temporary restraining order (Ill. Rev. Stat. 1971 ch. 69, par. 3-1) and a preliminary injunction, and both may be appealed under Rule 307(a), which provides: 'An appeal may be taken to the Appellate Court from an interlocutory order of court (1) granting, modifying, refusing, dissolving or refusing to dissolve or modify an injunction; • • •.' (Ill. Rev. Stat. 1971, ch. 110A, par. 307(a).) Thus it makes no difference if the order in dispute was a temporary restraining order, as the plaintiff argues, or a "temporary" injunction, as the defendant insists. The plaintiff's first contention must be rejected, and its motion to dismiss the appeal, based on the same contention, which was taken with the case, must be denied.

"The plaintiff's second affirmative contention is that the appeal is moot; that there is no justiciable controversy before this court because the order from which the appeal is taken expired by its own terms." "Their relevancy to the question of mootness has now become apparent and the order denying leave to file is vacated. Since the order from which this appeal is taken expired the day after the appeal was filed, the present controversy seems to be moot."

The rights of Appellant have been jeopardized by the language in the mandate that the restraining order is in full force and effect, even though it is contrary to Ill. Rev. Stats., 1971, ch. 69,, par. 3-1. The damages to Defendant-Appellee are compounded in that the language of the mandate is being cited in the case instituted by the Appellant in the U.S. District Court, Northern District of Illinois entitled *B. Coleman Corporation, et al.* v. *Daniel Walker, et al.,* Case No. 75 C 353. That case seeks to determine the constitutionality of the Currency Exchange Act and whether it applies to the issuers of exchange

at multi locations, ch. 16½, Sec. 301, Ill. Rev. Stats. 1971, and said proceeding seeks to restrain Appellee from prosecuting a contempt citation against Defendant-Appellee based on the language in the mandate.

That to permit a temporary restraining order to have the same effect as a preliminary injunction is a misuse of judicial process. This is especially true when the temporary restraining order is being used to impose on a defendant restrictions based on the complaint that is being controverted. That the Supreme Court of the United States has previously held in *Lloyd Marey Auditor of Public Accounts of the State of Illinois, et al.* v. *George W. Daud, et al.*, 350 U.S. 457, 1 L.Ed. 2nd, 1485; *Hageman Farms Corp.* v. *Baldwin,* 293 U.S. 163, 170, that the 14th Amendment does not guaranty competition. The complaint for a preliminary injunction without notice was based on the "bald assertion" that the appellant was conducting a currency exchange. The trial Court quite obviously should have held an evidentiary hearing, but instead issued a temporary restraining order. The Constitutionality of the Currency Exchange Act is challenged and Appellant's right to challenge it is confirmed by the decision of *Hartman* v. *Scott* (1973 C.A. 8, Minn.) 488 Fed. 2d 1215. While Appellant would prefer to eliminate competition, there is no basis for the Supreme Court of Illinois to overthrow, disregard and ignore the Injunction Act of the State of Illinois, Ch. 69, sec. 3 and sec. 3-1, *which establishes the duration of a temporary restraining order.*[1]

If the temporary restraining order is permitted to stand by virtue of the erroneous order of the Supreme Court

[1] Emphasis ours.



of Illinois in utter disregard of Appellant's rights under the 1st and 14th Amendments to the Constitution, the Appellant is forced out of business, and while he may win in the final analysis, its customers will have disappeared and it would be an equivalent of appointing a receiver or bankruptcy. In the interim, Appellee might or might not obtain the customers serviced by the Appellant.

There is a justiciable controversy as decided in the case of *Richard Guy Steffel* v. *John R. Thompson, et al.*, 39 L.E.D. 2d 505. Appellant is called in to question the Constitutionality of the Currency Exchange Act and this Court is then presented with two propositions. First, can the Supreme Court of the State of Illinois overthrow, ignore or use the Injunction Act of the State of Illinois, Ch. 69, sec. 3 and 3-1 and can it deprive Appellant of its Constitutional rights under the 1st and 14th Amendments to the Constitution of the United States to force Appellant to cease business irrespective of the license it has from the Department of Financial Institutions of the State of Illinois to sell money orders of Travelers Express and travelers checks of American Express, pursuant to the provisions of the Exchange Act?

The challenge to Appellant's rights is even greater when it is considered that the proceedings are instituted, not by the Department of Financial Institutions of the State of Illinois, which Department determines whether defendants are acting properly, but instead the proceedings are instituted by a currency exchange that it insists it has an exclusive right to issue exchange and cash checks whereas the Sale of Exchange Act provides to the contrary.

The Injunction Act of the State of Illinois is similar to the Federal Injunction Act, which also provides that a temporary restraining order automatically terminates, ceases or dies at the end of the ten-day period. The attempt to construe the temporary restraining order of October 29, 1974, as being a permanent restraining or injunction order is obviously contrary to the Injunction Act of the State of Illinois, and Appellant is being deprived of its rights.

## CONCLUSION

It is quite clear from the aforegoing, that the Supreme Court erred as follows:

1. That the court's finding, in the order of January 29th, 1975, that the order of the Appellate Court issuing a stay order, of the temporary restraining order, of the trial court was an error.

2. That the Supreme court further erred in refusing to grant a rehearing, or to clarify its order of January 29th, 1975.

3. That the Court further erred when on May 14th, 1975, it denied Appellant's motion, to recall the mandate issued April 4th, 1975, and to conform the language of the Mandate to the order of January 29th, 1975.

4. That the language of the Mandate is contrary to Chap. 69, Sec. 3 and 3-1, Ill. Rev. Stat., 1971. (Injunction Act)

The order and the Mandate violate the First and Fourteenth Amendments to the Constitution of the U.S. in that



it places Appellants in great jeopardy of a fine or jail sentence.

Appellant therefore moves that this court grant Certiorari.

Respectfully submitted,

WILLIAM HENNING RUBIN
*Attorney for Defendant-Appellant.*

## APPENDIX

Order of January 29th, 1975

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, and now being sufficiently advised of and concerning the premises, are of the opinion that the Appellate Court for the First District erred in granting the stay order.

It Is Therefore Ordered that the stay order of the Appellate Court for the First District be and the same is vacated.

And it is further considered by the Court that neither in the record and proceedings of the Circuit Court of Cook County as to the issuance of the restraining order, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the issuance of the restraining order by the Circuit Court of Cook County, aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error, and this cause be remanded to the Circuit Court of Cook County for a hearing on the merits.

And it is further considered by the Court that the said appellant recover of and from the said appellee costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, Clell L. Woods, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true

copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto
subscribed my name and affixed the
Seal of said Court this 4th day
of April A.D. 1975.

/s/ Clell L. Woods
Clerk,
Supreme Court of the State of Illinois.
(Seal)

Order of March 12, 1975, denying motion for rehearing, reconsideration, clarification, or in the alternative to grant a rehearing.

And now, on this day, the Court having duly considered the motion by appellee for reconsideration of the order entered January 29, 1975, and for clarification, or, in the alternative, to grant appellee a rehearing, and being now fully advised of and concerning the premises;

It Is Hereby Ordered that the motion by appellee for reconsideration of the order entered January 29, 1975, and for clarification, or, in the alternative, to grant appellee a rehearing be, and the same is, denied.

## MOTION TO RECALL MANDATE AND TO CORRECT MANDATE TO CONFORM TO DECISION OF THE COURT

Now comes B. Coleman Corporation, defendant-appellee, and moves the Court that the mandate issued by this Court be recalled and that the mandate be revised to conform to the decision of this Court.

That in support of this motion, appellee states as follows:



1. That a decision was rendered by this Court that the Appellate Court erred in granting the Stay Order and the cause was remanded to the Circuit Court for a hearing on the merits.

2. That during oral argument the justices of the Supreme Court suggested that the Appellate Court erred in vacating the restraining order of the Trial Court since it was a temporary restraining order that terminated at the end of the 10-day period.

3. That appellee filed a motion to clarify or reconsider the decision of this Court in order that all the parties and the Trial Court would be further informed as to the basis for the Court's decision, but that motion was denied.

4. That the mandate issued contains the following language:

> "Therefore, it is considered by the Court that the issuance of the restraining order by the Circuit Court of Cook County, aforesaid, Reaffirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error, and this cause be remanded to the Circuit Court of Cook County for a hearing on the merits."

5. That the failure of the mandate to conform to the order places the appellee in jeopardy.

6. That the language of the mandate is contrary to the case law that a temporary restraining order terminates at the end of the 10-day period.

Wherefore, appellee moves:

A. That the mandate issued April 5, 1975 by this Court be recalled.

B. That the language of the mandate be changed, altered or modified to conform to the order entered January 29, 1975.

C. That appellee may have such further relief as this Court deems proper.

/s/ WILLIAM HENNING RUBIN
William Henning Rubin
*Attorney for Defendant-Appelle*

Mandate

And now, on this day, the Court having duly considered the motion by appellee for stay of mandate, and being now fully advised of and concerning the premises;

It Is Hereby Ordered that the motion by appellee for stay of mandate be, and the same is, denied.

Order entered May 14th, 1975 denying motion to recall mandate and to modify or clarify language to conform to order of January 29th, 1975.

And now, on this day, the Court having duly considered the motion by appellee that the mandate be recalled and modified, and being now fully advised of and concerning the premises;

It Is Hereby Ordered that the motion by appellee that the mandate be recalled and modified be, and the same is, denied.

Notice of Appeal filed May 19th, 1975.

NOTICE OF APPEAL

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The B. Coleman Corporation, an Illinois corporation, Defendant-Appellee, hereby Appeals to the Supreme Court of the United States pursuant to 28 USC Section 1257, from the Order entered on the 29th day of January, 1975 Vacating the Stay Order of the Appellate Court for the First District and from the Motion of Appellee to recall the Mandate of the Supreme Court, to vacate the Mandate and to correct the language of the Mandate to conform to the Order of January 29, 1975 in accordance with Ill. Rev. Stat. 1971, Ch. 69, Sec. 3 and 3-1 establishing the duration of a temporary restraining order, and from the Order entered on the 14th day of May, 1975, denying Appellees Motion to recall the Mandate and to correct it to conform to the Order of January 29, 1975.

Defendant-Appellee prays that said Order be reversed and the case remanded.

Dated at Chicago, Illinois this 15th day of May, 1975.

The B. Coleman Corporation, Appellee
By: /s/ William Henning Rubin,
William Henning Rubin,
Attorney for Defendant-Appellee

William Henning Rubin
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CERTIFICATE

I hereby certify that I served a copy of the aforegoing Notice of Appeal on all of the attorneys whose names appear thereon by mailing a copy thereof this 15th day of May, 1975 with sufficient postage in a properly addressed envelope thereto.

/s/ William Henning Rubin

Amended Notice of Appeal filed May 20th, 1975.

AMENDED NOTICE OF APPEAL

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B. Coleman Corporation, an Illinois corporation, Defendant-Appellee, hereby appeals to the Supreme Court of the United States, pursuant to 28 USC Section 1257, from the Order entered January 29, 1975 vacating the Stay Order of the Appellate Court for the First District, and from the Motion of appellee to recall the Mandate of the Supreme Court, to vacate the Mandate and correct the language of the Mandate to conform to the Order of January 29, 1975, in accordance with Ill. Rev. Stats. 1971,



Ch. 69, Sec. 3 and 3-1, establishing the duration of a temporary restraining order, and from the Order entered May 14, 1975 denying appellee's motion to recall the Mandate and to correct the Mandate to conform to the Order of January 29, 1975.

Defendant-appellee prays that said Order be reversed and the case remanded.

Dated at Chicago, Illinois this 17th day of May, 1975.

B. Coleman Corporation,
an Illinois corporation,
Defendant-Appellee
By /s/ William Hennings Rubin
William Hennings Rubin
Its Attorney

CERTIFICATION

I hereby certify that I served a copy of the above-Amended Notice of Appeal on all addressees by mailing a copy this 17th day of May, 1975 in properly addressed envelopes.

/s/ William Henning Rubin

William Henning Rubin
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Supreme Court, U. S.
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AUG 25 1975
MICHAEL RODAK, JR., CLERK

No. 74-1585

In the

# Supreme Court of the United States

OCTOBER TERM, 1974

47TH AND STATE CURRENCY EXCHANGE, INC.,
an Illinois corporation,
*Plaintiff-Appellee,*

*vs.*

B. COLEMAN CORPORATION,
an Illinois corporation,
*Defendant-Appellant.*

**ON APPEAL FROM THE SUPREME COURT OF ILLINOIS**
**MOTION TO DISMISS OR AFFIRM**

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The Scheffer Press, Inc.—(312) 263-6850

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

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## No. 74-1585

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47TH AND STATE CURRENCY EXCHANGE, INC.,
an Illinois corporation,

*Plaintiff-Appellee,**

*vs.*

B. COLEMAN CORPORATION,
an Illinois corporation,

*Defendant-Appellant.*

---

**ON APPEAL FROM THE SUPREME COURT OF ILLINOIS**
**MOTION TO DISMISS OR AFFIRM**

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The Appellee moves the Court to Dismiss the Appeal herein, or, in the alternative, to Affirm the Judgment of the Supreme Court of Illinois on the grounds that it is manifest that the questions on which the decision of the cause depends are so insubstantial as not to need further argument.

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* The B. Coleman Corporation has mislabeled itself in its Jurisdictional Statement. It is not the Appellee in this Appeal. It is the Appellant. The 47th and State Currency Exchange, Inc. has taken the liberty of making the correction herein.

## I.

## THE STATE STATUTES INVOLVED AND THE NATURE OF THE CASE

### A. THE STATUTES

This Appeal raises questions of the validity of certain provisions of the Illinois Injunction Act, Ill. Rev. Stat., 1973, Ch. 69, Section 1 et seq.; the Illinois Community Currency Exchange Act, Ill. Rev. Stat., 1973, Ch. 16½, Sections 30.1 et seq.; and the Illinois Sale of Exchange Act, Ill. Rev. Stat., 1973, Ch. 16½, Sections 301 et seq. A copy of the Illinois Injunction Act is included as Appendix "A"; a copy of the Illinois Community Currency Exchange Act is included as Appendix "B"; and a copy of the Illinois Sale of Exchange Act is included as Appendix "C".

The gist of Appellant's contention is that it was denied due process of law in the entry of the Temporary Injunction prohibiting it from cashing checks at escalated fees, and that the Illinois Community Currency Exchange Act is unconstitutional to the extent that it varies with the Illinois Sales of Exchange Act (sic).

With respect to the issuance of the Temporary Injunction, Appellant attacks the constitutionality of the Illinois Injunction Act. To put the appeal in perspective, a brief summary of the facts is essential. Initially, the 47th and State Currency Exchange applied for a Temporary Injunction in the Circuit Court of Cook County, Illinois. In the State of Illinois, a Plaintiff may make an application for an Ex Parte Injunction by proceeding upon an Affidavit or Verified Complaint charging specific facts which give rise to immediate and irreparable loss. Ill. Rev. Stat., 1973, Ch. 69, Section 3-1. See also, *People ex rel. Scott* v. *Aluminum Coil Anodizing Cable Corporation,* 132 Ill. App. 2d 168, 268 N.E. 2d 53 (1971). An Injunction



can only be granted by a Judge, and a bond is always required of a private litigant. Ill. Rev. Stat., 1973, Ch. 69, Section 9. The underlying reality of Illinois Injunction law is the right to be heard. As such, the Illinois Injunction Act adheres to the constitutional norm of an adversary hearing and the right to cross-examine sworn oral testimony.

Here, the Appellant was given notice of the Ex Parte Injunction. The B. Coleman Corporation chose not to file an Answer and chose not to ask for a full evidentiary hearing. Instead, it chose to file a Motion to Dissolve and Modify the Temporary Injunction.

The second question raised by the Appellant involves the constitutionality of the Illinois Community Currency Exchange Act. Section 1 of the Illinois Community Currency Act Ill. Rev. Stat., 1973, Ch. 16½, Section 30 explicitly states the "findings and declarations . . ." of the Illinois Legislature in having it enacted. The explicit language of the Section, in pertinent part, provides:

> "The General Assembly has found and declares: that the Community Currency Exchange business . . . has become so widespread since the bank holiday in 1933, and so extensively and intimately integrated with the financial institutions of this State that it is affected with the public interest and should be licensed and regulated as a business affecting the convenience, general welfare, and economic interest of the people of this State;
>
> *That no currency exchange should be operated without a license,* or otherwise then in accordance with the regulations provided in, or to be provided pursuant to this Act;
>
> That the number of Community Currency Exchanges should be limited in accordance with the needs of the

communities that they are to serve, and in accordance with the provisions of this Act;

• • •

That it is in the public interest to promote and foster the Community Currency Exchange business and to assure the financial stability thereof."

The third question raised by the defendant is the Application of the Sales of Exchange Act.

The Illinois Sales of Exchange Act, supra, carved out an exception to the Illinois Community Currency Exchange Act by providing for separate licensing of large businesses selling or issuing Bills of Exchange, including money orders, at multiple locations throughout the State through agents or representatives. Defendant-Appellant contends that this statute gives it a right to cash checks.

## II.

## PROCEEDINGS BELOW

The Defendant-Appellee, 47th and State Currency Exchange, Inc., is an Illinois corporation and is licensed to do business as a Currency Exchange under the Community Currency Exchange Act of the State of Illinois, supra. It has its principle place of business at 4709 South State Street, Chicago, Illinois.

The B. Coleman Corporation is likewise an Illinois corporation and has its principle place of business at 4705 South State Street, Chicago, Illinois. Its primary business activity is that of a real estate management firm. Admittedly, it is not licensed as a Community Currency Exchange and has never made an application to become one with the Director of the Department of Financial Institutions. Notwithstanding, the B. Coleman Corporation



has offered to perform and has performed the following services for the public generally:

a. Cashing of checks for a fee or service charge;
b. Issuing travelers checks for a fee;
c. Accepting payment of utility bills for a fee;
d. Issuing money orders for a fee;
e. Selling Illinois State Lottery Tickets; and
f. Performing license and title services for a fee.

This lawsuit was instituted by the filing of a Complaint for Injunction and other relief on October 25, 1974 by the 47th and State Currency Exchange Inc. Plaintiff-Appellee sought the entry of a Temporary Injunction enjoining Appellant from:

"(1) Engaging in the business or service of, and providing facilities for cashing checks, drafts, money orders, or any other evidence of money acceptable to such community currency exchange for a fee or service charge or other consideration;

(2) Engaging in the business of selling or issuing money orders, under its name or any other money orders;

(3) Placing any and all signs, posters, or other advertisement affixed to the premises of Defendant located at 4705 South State Street, which indicate, or tend to indicate, to members of the general public that Defendant is engaged in the business of operating a community currency exchange; and

(4) Distribu[illegible]g any and all leaflets, pamphlets, business cards or other publications which indicate, or tend to indicate to members of the general public that Defendant is engaged in the business of operating a community currency exchange."

A Temporary Injunction was entered against Appellant on October 25, 1974 restraining and enjoining it from

engaging in all of the acts complained of in Plaintiff's Complaint. Thereafter, the B. Coleman Corporation moved to Vacate the Temporary Injunction. Among the reasons cited in support of the Motion to Vacate were (1) Defendant-Appellant had been given improper notice; (2) it was entitled to a hearing; (3) it cashed checks as an incident to the retail sale of merchandise; and (4) it also cashed checks for its tenants only as an incident to its real estate management service.

After hearing, the Chancellor vacated the Temporary Injunction and entered a further Temporary Injunction which in pertinent part read:

> "That the B. Coleman Corporation is authorized to sell money orders, pursuant to its license as agent for American Express Company and Travellers Express Company, Inc. That B. Coleman Corporation is restrained from cashing checks in connection with the sale of the money orders and charging a fee for cashing same, but it may cash checks for its tenants."

On October 29, 1974,, the Defendant-Appellant filed a Notice of Appeal with the Circuit Court of Cook County. Thereafter, an Amended Notice of Appeal was filed on October 30, 1974. Defendant-Appellant then moved for the entry of a Stay Order from the Illinois Appellate Court, First District. There, Defendant-Appellant advocated the theory that it had a right to engage in the Currency Exchange business, notwithstanding the fact that it did not have a license, since it was a licensee of both the American Express Company and the Travellers Express Company, Inc. (Both American Express and the Travellers Express are licensees of the State of Illinois under the Sales of Exchange Act, supra.) The gist of De-



fendant-Appellant's theory was that because it was a licensee of both the American Express Company and Travellers Express Company it necessarily followed that it could engage in the Community Currency Exchange business. The requested stay order was entered on November 12, 1974.

A Petition to Vacate the Stay Order was filed by the 47th and State Currency Exchange, Inc. with the Illinois Appellate Court on November 12, 1974. The Petition to Vacate was denied on November 27, 1974, and an Appeal ensued to the Illinois Supreme Court.

On December 10, 1974, the Plaintiff-Appellees filed a Petition for the Entry of an Order to transfer the Appeal from the Illinois Appellate to the Illinois Supreme Court. The Petition to transfer under Illinois Supreme Court Rule 302(a), Ill. Rev. Stat., 1973, Ch. 110A, Section 302(a), was granted; an emergency briefing schedule ordered; and the Petition to Vacate the Stay was entered and continued to the day of Oral Argument.

Oral argument was heard before the Illinois Supreme Court on January 27, 1975. On January 29, 1975, the Illinois Supreme Court without Opinion affirmed the Temporary Injunction entered by the Chancellor of the Circuit Court of Cook County, and vacated any Stay theretofore entered against the enforcement of the Injunction. Thereafter, the B. Coleman Corporation filed its direct appeal to this Court. Presently, it persists in operating in violation of the Temporary Injunction of the Circuit Court of Cook County and without a Stay Order from the Supreme Court of the State of Illinois or this Court. A Petition for Rule to Show Cause is presently pending before the Chancellor in the Circuit Court of Cook County, Illinois but said Chancellor awaits the determination of this Court before imposing Sanctions.

## III.

## ARGUMENT

### THIS CASE PRESENTS NO SUBSTANTIAL QUESTIONS FOR DETERMINATION

Ex parte practice in Injunctions is ancient and almost universal. *F. Frankfurter and N. Green, The Labor Injunction,* 182, Note 189 (1930). It has been approved by this Court in *Carroll* v. *Princess Anne,* 393 U.S. 175, 180 (1968) and by respected commentators. *Monaghan, First Amendment "Due Process,"* 83 Harvard Law Review 518, 537 (1970).

Defendant-Appellee respectfully submits that due process is a concept which varies in relation to the particular set of interests in each case. *Cafeteria Workers, Local 473* v. *McElroy,* 367 U.S. 886 (1961). Notice and a hearing in advance of an adjudication which may affect Defendant's rights are core values in our adversary system and have been said to be the very essence of procedural due process. *Mullane* v. *Central Hanover Trust Company,* 339 U.S. 306 (1950). Clearly, each Defendant should have notice, and he should receive it far enough in advance to allow him to prepare. *Fluentes* v. *Chevin,* 407 U.S. 67 (1972); *Mullane* v. *Central Hanover Trust Company,* supra.

Sometimes, practical problems arise, and flexibility must be considered as well as the Plaintiff's need for haste. The United States Constitution requires no more than "notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of an action and afford an opportunity to present their objections." *Mullane* v. *Central Hanover Trust Company,* supra. In this case,



sufficient notice was given to the Defendant, and the Defendant moved to modify and/or dissolve the Injunction. It chose to argue merely questions of law. There is no question but that the B. Coleman Corporation had proper notice. Advisory Committee's note to 1966 Amendments to Rule 65(b), 39 F.R.D. 124-125 (1966). Clearly, the constitutional issues here do not turn on formalities but revolve around fairness, *International Shoe Company* v. *Washington,* 326 U.S. 310 (1945), and actual notice, *Robinson* v. *Hanrahan,* 409 U.S. 38 (1972).

## IV.

### THE PUBLIC INTEREST UNDER THE ILLINOIS COMMUNITY CURRENCY EXCHANGE ACT

The constitutionality of the Illinois Community Currency Exchange Act was sustained in *McDougall* v. *Lueder* (1945) 389 Ill. 141, 58 N.E. 2d 899. In that case the Plaintiffs filed a Complaint in the Circuit Court of Cook County alleging that they did business as a partnership under the name of "McDougall and Martin Armored Car Check Cashing Service"; that as part of the objects and among the activities and enterprises of their partnership was the matter of cashing checks, drafts, money orders and all other evidences of money acceptable to them for a fee or service charge. In attacking the constitutionality of the Community Currency Exchange Act, the Plaintiffs alleged that their business and activities were not dangerous to the public, directly or indirectly, but afforded facilities for the convenience and benefit of persons desiring to cash checks, drafts, money orders and other evidences of money; and that said business activities did not affect the public health, public morals, public comfort, public safety or general welfare of the people of the State, nor did they involve any inherent or innate fraudulent prac-

tices. In upholding the constitutionality of the Act the Illinois Supreme Court held at 903:

> "It becomes advisable first to determine whether or not the Currency Exchange Act falls within the general powers of the Legislature to pass laws for the protection of the public health, safety and morals and the promotion of the general welfare. The General Assembly has a wide discretion in the enactment of the laws within its police powers and, in pursuance of objects within the scope of its powers, may enact laws of limited or particular application so far as persons and property affected are concerned. . . . In discussing the extent of power which the Legislature possesses in matters relating to the police power the Illinois Supreme Court (citations omitted) said:
>
> > 'The power of the Legislature to pass laws for the preservation of good order or to promote public welfare and safety, or to prevent fraud, deceit, cheating, and imposition, has always been recognized in this State. (citations omitted) . . . A rightful exercise of the police power is not a violation of the Fourteenth Amendment, even though property interests are affected. . . . The police power has been defined as that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety and welfare of society. . . . This power is very broad and far reaching; yet it is not without restrictions. While the Courts will not pass upon the wisdom of an Act asserting the exercise of the police power, it will pass upon the question whether such Act has a substantial relation to the police power. . . . It must have some relation and be adapted to the end sought to be accomplished.'
>
> • • •
>
> That the business of providing facilities for cashing checks, drafts, money orders and all other evi-



> dences of money falls within the police power of the State seems without question. The business of handling the peoples money, issuing drafts, selling money orders under the name of the issuer and acting as a bailee in the payment of bills for a fee are endeavors requiring a certain amount of regulation and supervision. Any business conducted primarily or entirely by accepting funds of other people, undertaking to keep the funds intact for an indefinite length of time and the purchasing of paper, such as cashing checks or money orders, is one in which the public deserves more protection than only the judgment, skill and good luck of the proprietor to protect it against loss. The opportunities for loss through embezzlements, larceny, the unauthorized use of funds including bankruptcy through the mishandling of funds, is obvious. Reasonable regulation therefor falls within the powers of the Legislature in the interests of the public safety." (Emphasis Added)

Quite obviously, the explicit intendment of the Illinois General Assembly was to license and regulate the community currency exchange business, and accordingly protect the people of the State of Illinois from the loss of funds. The B. Coleman Corporation has never sought nor does it now possess an Illinois Community Currency Exchange License. However, it brazenly and scandalously declares that it does not need one.

As applied to Defendant-Appellant, the Statute defines a Community Currency Exchange as "any person . . . engaged in the business or service of, and providing facilities for cashing checks. . . ." (Section 1) The Statute further provides that an application must be made in

writing, disclosing, among other things, the name and business address of the applicant so as to establish the applicant's financial stability and credibility to the satisfaction of people of the State of Illinois (Section 4); further that, a bond for the benefit of any creditor of such community currency exchange must be posted with the Director of the Department of Financial Institutions (Section 8). Clearly, the minimum safeguards protecting the people of the State of Illinois have not been met by the B. Coleman Corporation. But it persists in its business as a community currency exchange.

Without doubt, the cashing of checks at escalated fees constitutes the currency exchange business. However, the B. Coleman Corporation has alleged that it comes within sale of the tangible personal property exemption contained in Section 1 of the Community Currency Exchange Act, Ill. Rev. Stat., 1973, Ch. 16½, Section 31. Plaintiff-Appellee respectfully submits that the Defendant-Appellant clearly falls outside of the narrow strictures of the exception pertaining to the cashing of checks incident to the retail sale of merchandise.

In 1949, the Illinois Attorney General issued an opinion which narrowly construed this exception. 1949 Illinois Attorney General Report Number 54 at 140. The circumstances leading to the issuance of this Illinois Attorney General's Opinion are not unduly complicated. It would appear that the State's Attorney of Champaign County, Urbana was faced with the potential of possibly having to prosecute several local businessmen engaged in commercial enterprises and who cashed checks as an incident to the retail sale of merchandise. These businessmen in turn were charged for their banking transactions by their depository banks. State's Attorney Bresee asked:



> "If, in the course of their business and only as an incident to the sale (of merchandise), they cash a check for the customer and charge the customer a nominal fee (such as five cents) to cover the cost later charged to them, would such action on their part, constitute a violation of the Community Currency Exchange Act (citations omitted) so that a criminal charge should be filed?"

In answering the request, the Illinois Attorney General responded:

> "Construing Paragraph 31 as a whole, it is obvious that the exception contained in the last part of this Paragraph refers to a person who, for a fee or service charge or other consideraton, cashes checks, drafts, money orders or other evidences of money in the course of and only as an incident to the business of selling tangible personal property at retail. (Citations omitted) Supra, p. 142.
>
> The phrase 'cashes checks, drafts, money orders or other evidences of money' as used in the excepting clause describes business transactions covered by the definition of a 'community currency exchange' set forth in the first part of said paragraph. It is the providing of facilities for the business or service of any one or more of said types of transactions and the engaging in such business or service for fees, service charges or other consideration that Paragraph 31 includes within the meaning of a currency exchange, and declares the same, subject to license as provided by the terms of said Act.
>
> The effect, therefore, of the excepting clause referred to, is to withdraw from the operation of the Community Currency Exchange Act the cashing of checks, drafts, money orders or other evidences of money, for a fee, service charge or other consideration, when done only as an incident to the conduct of a business other than a community currency exchange, as specified in such exception.

By construing each part and section in connection with every other part and section of the Community Currency Exchange Act so as to produce a harmonious act, it will be observed that with reference to the cashing of checks, for a fee or service charge or other consideration, only as an incident to the business of selling tangible personal property at retail, such check cashing is not the type of business transactions coming within the purpose and intent of such act, to be licensed and regulated thereunder.

In view of the foregoing, it is my opinion that the class of business men described by you in your letter, appear not to be engaged in the business or service of cashing checks, or providing facilities for cashing checks for a fee, service charge or other consideration as contemplated by the terms of the Community Currency Exchange Act. In this connection it is assumed, of course, that such class of business men are well within the category of persons chiefly engaged in the business of selling tangible personal property at retail." Supra, at Page 142.

The 47th and State Currency Exchange has reprinted 1949 Illinois Attorney General Opinion Number 54 as Appendix D.

The Defendant-Appellee respectfully submits that the Illinois General Assembly has taken no action to alter the language of Section 1 of the Community Currency Exchange Act, Ill. Rev. Stat. 1973, Ch. 16½, Section 31. A consistent construction of this Act has been acquiesced in by Legislature for over twenty-five (25) years. "A reasonable construction of an ambiguous Statute by the governmental officers of departments charged with its enforcement, if contemporaneous, consistent, long-continued, and in concurrence with legislative acquiescence, creates a presumption of correctness which is only slightly less persuasive than a judicial construction of the same Act."



*The People ex rel. John C. Watson* v. *House of Vision* (1975), 59 Ill. 2d 508; *Fried* v. *Danaher* (1970), 46 Ill. 2d 475, Appeal dismissed 402 U.S. 902, 28 L. Ed. 2d 643, 91 S. Ct. 1382; *McNely* v. *Board of Education* (1956), 9 Ill. 2d 143; *People ex rel. Spiegel* v. *Lyons* (1953), 1 Ill. 2d 409; *Cory Corporation* v. *Sauber* (1960), 363 U.S. 709, 4 L. Ed. 2d 1508, 80 S. Ct. 1331.

In *Cardona* v. *Saxbe,* 43 L.W. 4017 (Nov. 24, 1974), the Court reaffirmed the aforegoing theory of administrative construction when it held:

> "Such long standing, administrative construction is entitled to great weight, particularly when as here Congress has revisited the Act and left the practice untouched. Such a history of administrative construction and congressional acquiescence may add a gloss or qualification to what is on its face unqualified statutory language. *Massachusetts Trustees* v. *United States,* 377 U.S. 235 (1964); *United States* v. *Midwest Oil Co.,* 236 U.S. 459 (1915) . . . 43 L.W. 4017, 4020."

Here, the B. Coleman Corporation is not engaged in the retail sale of merchandise though it belatedly obtained a Retail Occupation Tax Number, and purportedly now is in the business of selling an occasional bicycle at retail.[2] in the business of selling an occasional bicycle at retail.[1] tained in the last sentence of the aforecited Illinois Attorney General's Opinion. Therein, the Illinois Attorney General cautioned:

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[1] Under any circumstances, this defense raises fact questions that can only be asserted in an Answer. The B. Coleman Corporation never filed an Answer. It filed a Motion to Dissolve or Modify. On this, it had a hearing. Defendant-Appellant can not waive a right and then argue error.

> "In this connection it is assumed, of course, that such class of businessmen are well within the category of persons chiefly engaged in the business of selling tangible personal property at retail."

Furthermore, even assuming arguendo that the B. Coleman Corporation fell within the retailer's exemption, its activities would still violate and contravene the long standing construction of this statute. In his Opinion, the Illinois Attorney General indicated that a retailer could charge "a nominal fee" for the cashing of checks. In his opinion request, the State's Attorney of Champaign County, Urbana, equated a nominal fee with the normal banking charge for the handling of the individual transaction by the retailer's depository bank. A five cent fee was suggested as being acceptable, and was recently construed as acceptable in *Heidelberger* v. *Jewel Companies, Inc.* (1974) 57 Ill. 2d 874, 312 N.E. 2d 601. However, it is clear from the pleadings and record that the B. Coleman Corporation is not charging a nominal fee equivalent to its normal banking charges. Rather, it is charging an escalated fee depending upon the size of the check cashed for its customer.

No argument of the Defendant-Appellant can exempt it from the clear meaning of the Illinois Community Currency Exchange Act. It has raised no substantial constitutional issue requiring the reversal of the order of January 29, 1975 of the Illinois Supreme Court.

## V.

## THE SALES OF EXCHANGE ACT

Prior to June 24, 1957, Illinois Law provided a specific Statutory exemption allowing the American Express Company to sell money orders without complying with other sections of the Community Currency Exchange Act. Ill. Rev. Stat., 1955, Ch. 16½, Section 31. This paragraph defined a "Community Currency Exchange" to be regulated by the Act to include, with certain exceptions not relevant here, any business,



> "engaged at a fixed and permanent place of business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money acceptable to such community currency exchange, for a fee or service charge or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders, American Express Company money orders, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services."

It is clear from the above language that a community currency exchange included any business cashing checks for a fee or service charge or other consideration or issuing money orders, except that certain specific entities, including the American Express Company, were allowed to issue money orders without complying with other sections of the Act.

George W. Doud and others brought suit in the United States District Court for the Northern District of Illinois against the Auditor of Public Accounts of the State of Illinois, the Attorney General of the State of Illinois and the States Attorney of Cook County, seeking an Injunction against the enforcement of Chapter 16½ alleging that the exemption granted to the American

Express Company constituted a violation of the Plaintiffs' Equal Protection Rights guaranteed under the Fourteenth Amendment and constituted discrimination against them in favor of the American Express Company. On June 12, 1956 the United States District Court for the Northern District of Illinois sustained the Plaintiffs' position, unanimously holding that the Act violated the Equal Protection Clause and that the Plaintiffs were entitled to the relief sought. *Doud* v. *Hodge,* 146 Fed. Sup. 887 (1956). Defendants appealed directly to this Court which noted probable jurisdiction on December 3, 1956. *Morey* v. *Doud,* 352 U.S. 923, 1 L.Ed. 2d 159, 77 S. Ct. 224, (1956). Oral arguments were made on April 24, 1957.

Six days after oral argument, on April 30, 1957, Illinois House Bill 1030 was introduced in the Illinois General Assembly. Journal of the Illinois House of the 70th General Assembly, Page 888. This Bill provided for the enactment of "Sale of Exchange Act." *supra.* That Bill passed the Illinois House on June 4, 1957. Journal of the Illinois House of the 70th General Assembly, Page 2041.

On June 24, 1957 the decision in *Morey* v. *Doud* was rendered by the Court, sustaining the Order of the District Court. 354 U.S. 457, 1 L.Ed. 2d 1485, 77 S.Ct. 1344, (1957). Just three (3) days later House Bill 1030 passed the Illinois Senate together with certain Amendments to the original House Bill. Journal of the Illinois Senate of the 70th General Assembly, Page 2524. The next day the House passed the Bill together with all of the Senate Amendments. Journal of the Illinois House of the 70th General Assembly, Page 3358. The Governor



signed the Bill into Law on July 7, 1957 and the Law became effective September 1, 1957.

Even a cursory reading of the Sale of Exchange Act when viewed in light of the legislative history of the Act makes it clear that the purpose of the Law was to enable the American Express Company to continue its business which included the sale of money orders in the State of Illinois after the decision in *Morey* v. *Doud, Supra.*

As stated, the Community Currency Exchange Act, regulates the cashing of checks for a fee or a service charge and the issuance of money orders. The Sale of Exchange Act, carvel out a single exception to the Community Currency Exchange Act by providing for separate licensing of large businesses selling or issuing Bills of Exchange, including money orders, at multiple locations throughout the State through agents or representatives.

Defendant-Appellant argues that the creation of one exception to the Community Currency Exchange Act in effect constitutes the creation of a complete exemption from the requirements of that Act. Such a complete exemption is not specifically provided and its implication would violate the fundamental principle embodied in the maxim "expressio unius exclusio alterius," that the mention or enumeration of one or more certain things in a Statute excludes all other things not mentioned in the Statute. *In re Leichtenberg's Estate,* 131 N.E. 2d 487, 7 Ill. 2d 545.

It is also a fundamental principle of statutory construction that where separate Acts are subject to construction which would cause them to be inconsistent, if it is possible to construe them so as to be consistent

with one another, the latter construction should be used. *People ex rel. Little* v. *Peoria and E. Ry. Co.*, (1943), 48 N.E. 2d 518, 383 Ill. 79. In the instant case this Rule of Construction requires the Court to find that the Sale of Exchange Act created no implied exceptions to the Community Currency Exchanges Act. Defendant-Appellant further has sought to make an argument that its constitutional rights have been impaired by virtue of this Statute. Its theory on this issue is not exactly clear.

Defendant-Appellant argued below that in its opinion it would cause an inconvenience to those purchasing money orders were they forced to cash checks elsewhere. Whatever the factual basis for this argument, it is clear that Defendant-Appellant cannot substitute its notions as to convenience and/or necessity for those of the Illinois General Assembly and the Director of the Department of Financial Institutions of the State of Illinois.

## CONCLUSION

For the aforegoing reasons, the 47th and State Currency Exchange, Inc. prays that an Order be entered affirming the decision belowing, and dismissing Appellant's Direct Appeal.

Respectfully submitted,

DONALD S. CARNOW
*Attorney for Plaintiff-Appellee*



## APPENDIX A

AN ACT to revise the law in relation to injunction. [Approved March 25, 1874. R.S. 1874, p. 579.]

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

1. Power of circuit court.] § 1. The circuit courts shall have power to grant writs of injunction. As amended by act approved Aug. 24, 1965. L. 1965, p. 3562.

2. § 2. Repealed by Act filed July 13, 1939. L. 1939, p. 1167.

3. Preliminary injunction—Notice of application.] § 3. No court or judge shall grant a preliminary injunction without previous notice of the time and place of the application having been given the adverse party unless it clearly appears, from specific facts shown by the verified complaint or by affidavit accompanying the same, that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. As amended by act approved Aug. 7, 1967. L. 1967, p. 2714.

3—1 § 3-1. Temporary Restraining Order; Notice; Hearing; Duration.) No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes,

unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order.

On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. Added by act approved Aug. 7, 1967. L. 1967, p. 2714.

4. To stay suit or judgment.] § 4. When an injunction shall be granted to stay a suit or judgment at law, the proceeding shall be had in the county where the judgment was obtained, or the suit is pending; but the writ may be sent in the first instance into any county in this state where the defendants reside.



5. Release of errors.] § 5. Every injunction, when granted, shall operate as a release of all errors in the proceedings at law that are prayed to be enjoined.

6. § 6. Repealed by act approved Sept. 7, 1967. L. 1967, p. 3910.

7. What part of judgment may be enjoined.] § 7. Only so much of any judgment at law shall be enjoined as the plaintiff shall show himself equitably not bound to pay, and so much as shall be sufficient to cover costs. [As amended by act approved June 28, 1935. L. 1935, p. 914.]

8. Bond when judgment enjoined—Damages.] § 8. Before an injunction to enjoin a judgment, the plaintiff shall give bond to the owner thereof, in double the amount of such judgment, with sufficient surety approved by the court or judge, conditioned for the payment of all moneys and costs due to the owner of the judgment, and such damages as may be awarded against the plaintiff in case the injunction is dissolved. No such bond shall be required of any governmental office or agency. If the injunction is dissolved in the whole or in part, the plaintiff shall pay, exclusive of legal interest and costs, such damages as the court awards, not exceeding 10%,on such part as is released from the injunction. Amended by P.A. 76—1078, § 1, eff. Aug. 28, 1969.

9. Bond in other cases—Liability of surety.] § 9. In all other cases, the court or judge, in his or its discretion, may before issuing a restraining order or a preliminary injunction, require the applicant to give bond in such sum, upon such condition and with such security as may be deemed proper by the court or judge, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

No such bond shall be required of any governmental office or agency.

A surety upon a bond or undertaking under this Act submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.
Amended by P.A. 76—1078, § 1, eff. Aug. 28, 1969.

10. Bond, who may take.] § 10. The bond may be entered into before the court or judge granting or ordering the injunction, or before the clerk of the court, if the court or judge has approved the security. As amended by act approved May 26, 1943. L. 1943, vol. 1, p. 815.

11. Bond to be filed.] § 11. All bonds required by this act shall be filed with the clerk of the court to which the writ is returnable, before such writ shall issue.

12. Sale of subject to redemption.] § 12. In all cases where an injunction is dissolved by any court in this state, the court, after dissolving such injunction, and before finally disposing of the suit, upon the party claiming damages by reason of such injunction suggesting, in writing, the nature and amount thereof, shall hear evidence and assess such damages as the nature of the case may require, and to equity appertain, to the party damnified by such injunction, and may award execution to collect the same. However, a failure so to assess damages shall not operate as a bar to an action upon the injunction bond.
Amended by P.A. 77—969, § 1, eff. Aug. 17, 1971.

13, 14. §§ 13, 14. Repealed by Act approved June 21, 1933. L. 1933, p. 647, effective Jan. 1, 1934.]

15. Motion to dissolve at any time.] § 15. A motion to dissolve an injunction may be made at any time upon answer, or for want of equity on the face of the com-



plaint. [As amended by act approved June 28, 1935. L. 1935, p. 914.]

16. Motion to dissolve—Evidence.] § 16. Upon a motion to dissolve an injunction after answer, the court shall not be bound to take the answer as absolutely true, but shall decide the motion upon the weight of the testimony.

17. Affidavits.] § 17. The plaintiff may support his complaint and the defendant may support his answer by affidavits filed with the same, which may be read in evidence on the hearing of the motion to dissolve the injunction. [As amended by act approved June 28, 1935. L. 1935, p. 914.]

18. § 18. Repealed. Act approved June 23, 1933. L. 1933, p. 785, effective Jan. 1, 1934.

19. § 19. Repealed. Act approved June 28, 1935. L. 1935, p. 914.

20. Depositions read in final hearing.] § 20. Depositions taken upon a motion to dissolve an injunction may be read in the final hearing of the cause.

21, 22. §§ 21, 22. Repealed by P.A. 76—1369, § 1, eff. Sept. 17, 1969.

23. Injunctions on Sunday.] § 23. When an application shall be made on a Sunday for a writ of injunction, and there shall be filed with the compplaint an affidavit of the plaintiff, or his, her or their agent or attorney, stating that the benefits of an injunction will be lost or endangered, or irremedial damage occasioned unless such writ be immediately issued, and giving the reasons for such statement, then it shall be lawful for any officer who is authorized by the law of this State to grant writs of injunction, if it appears to him from such affidavit that the benefits of an injunction will be lost or endangered, or irremediable damage occasioned unless such writ be immediately issued, and if the plaintiff

otherwise be entitled to such writ under the law, to grant a writ of injunction on a Sunday; and it shall be lawful for the clerk to issue, and for the sheriff or coroner to serve such writ of injunction on a Sunday as on any other day, and all affidavits and bonds made and proceedings had in such case shall have the same force and effect as if made or had on any other day. [As amended by act approved June 28, 1935. L. 1935, p. 914.]

24. Amendment of pleadings.] § 24. Where relief is sought under this Act and the Court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitle him to relief but that he has sought the wrong remedy, the Court shall permit the pleadings to be amended, on just and reasonable terms, and the Court shall grant the relief to which plaintiff is entitled on the amended pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the Court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counterclaim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed.
Added by P.A. 78—390, § 1, eff. Oct. 1, 1973.



## APPENDIX B

AN ACT to prevent derogatory statements affecting corporations doing a banking or trust business. Approved May 21, 1921. L. 1921, p. 400.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Transferred from ch. 38, § 405, in 1961.

23.1 Statements derogatory to banking institutions.] §1. Any person who shall willfully and maliciously make, circulate, or transmit to another or others, any statements, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition, with intent to affect the solvency or financial standing of any corporation doing a banking or trust business in this State, or any building and loan association or federal savings and loan association doing business in this State, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement, rumor or suggestion, shall be guilty of a Class A misdemeanor: However, the truth of said statement, established by the maker thereof, shall be a complete defense in any prosecution under the provisions of this Act.
Amended by P.A. 77—2830, Art. 16, § 1, eff. Jan. 1, 1973.

24, 25. (L. 1921, p. 152.) Repealed by act approved May 24, 1965. L. 1965, p. 737.

26. (L. 1933, p. 720). [Expired].

27. (L. 1935, p. 226). [Expired].

### COMMUNITY CURRENCY EXCHANGES

AN ACT in relation to the definition, licensing and regulation of community currency exchanges and ambu-

latory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof. Approved June 30, 1943. L. 1943, vol. 1, p. 233. Title as amended by act approved June 27, 1951. L. 1951, p. 562.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

30. Findings and declaration of General Assembly.] § .01 The General Assembly has found and declares: that the community currency exchange business, as hereinafter defined in Section 1,[1] has become so widespread since the bank holiday in 1933, and so extensively and intimately integrated with the financial institutions of this State that it is affected with a public interest and should be licensed and regulated as a business affecting the convenience, general welfare, and economic interest of the people of this State;

that no community currency exchange should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act;[2]

that the number of community currency exchanges should be limited in accordance with the needs of the communities they are to serve, and in accordance with the provisions of this Act;

that there has arisen also the ambulatory currency exchange business, as hereinafter defined in Section 1, which has engaged heretofore in unlicensed competition with the licensed community currency exchange business;

that it is in the public interest to promote and foster the community currency exchange business and to assure the financial stability thereof;

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[1] Section 31 of this chapter.

[2] Sections 30—56.3 of this chapter.
Section added: L.1951, p. 562.



that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business without incurring the expenses of, or subjecting itself to the regulations imposed upon the community currency exchange business, and to secure thereby an unfair advantage; that there has resulted therefrom an unfair and ruinous competition to the licensed community currency exchange business;

that the operations of the ambulatory currency exchange business is such as to render it hazardous and dangerous to the public safety and security;

that the public welfare demands that no ambulatory currency exchange business should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act: and that the number of such ambulatory currency exchanges should be limited in accordance with the needs of the communities in which they are to be located and in accordance with the provisions of this Act. As amended by act approved July 24, 1959. L. 1959, p. 2264.

31. Definitions—Application of Act.] § 1. For the purposes of this Act:[1] "Community currency exchange" means any person, firm, association, partnership, or corporation, except an ambulatory currency exchange as hereinafter defined, banks incorporated under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged in the business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money, acceptable to such community currency exchange, for a fee or service charge or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders, Postal Telegraph Company money orders, or Western

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[1] Sections 30—56.3 of this chapter.

Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services.

"Ambulatory Currency Exchange" means any person, firm, association, partnership or corporation, except banks organized under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged in one or both of the foregoing businesses, or engaged in performing any one or more of the foregoing services, solely on the premises of the employer whose employees are being served.

"Location" when used with reference to an ambulatory currency exchange means the premises of the employer whose employees are or are to be served by an ambulatory currency exchange.

"Director" means the Director of Financial Institutions.

Nothing in this Act shall be held to apply to any person, firm, association, partnership, or corporation who is engaged primarily in the business of transporting for hire, bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value and who in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money directly for, or for the employees of and with the funds of and at a cost only to, the person, firm, association, partnership or corporation for whom he or it is then actually transporting such bullion, currency, securities, negotiable or non-negotiable documents, jewels, or other property of great monetary value, pursuant to a written contract for such transportation and all incidents thereof, nor shall it apply to any person, firm, association, partnership or corporation engaged in the business of selling tangible personal property at retail who, in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money.



As amended by act approved July 24, 1959. L. 1959, p. 2264.

32. License to operate community currency exchange—Violation—Injunction.] § 2. No person, firm, association, partnership or corporation shall engage in the business of a community currency exchange or in the business of an ambulatory currency exchange without first securing a license to do so from the Director.

Any person, firm, association, partnership or corporation issued a license to do so by the Director shall have authority to operate a community currency exchange or an ambulatory currency exchange, as defined in Section 1 hereof.[1]

No ambulatory currency exchange and no community currency exchange shall be conducted on any street, sidewalk or highway used by the public, and no license shall be issued therefor. An ambulatory currency exchange shall be required to and shall secure a license or licenses for the conduct of its business at each and every location served by it, as provided in Section 4 hereof,[2] whether the services at any such location are rendered for or without a fee, service charge or other consideration. Each plant or establishment is deemed a separate location. No license issued for the conduct of its business at one location shall authorize the conduct of its business at any other location, nor shall any license authorize the rendering of services by an ambulatory currency exchange to persons other than the employees of the employer named therein. If the employer named in such license shall move his business from the address therein set forth, such license shall thereupon expire, unless the Director has approved a change of address for such location, as provided in Section 13.[3]

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[1] Chapter 16½, § 31.
[2] Chapter 16½, § 34.
[3] Chapter 16½, § 43.

Any person, firm, association, partnership or corporation that violates this section shall be guilty of a Class A misdemeanor, and the Attorney General or the State's Attorney of the county in which the violation occurs shall file a complaint in the Circuit Court of the county to restrain the violation.

Amended by P.A. 77—2320, § 1, eff. Jan. 1, 1973.

33. Powers of community currency exchanges.] § 3. No community or ambulatory currency exchange shall be permitted to accept money or evidences of money as a deposit to be returned to the depositor or upon the depositor's order; and no community or ambulatory currency exchange shall be permitted to act as bailee or agent for persons, firms, partnerships, associations or corporations to hold money or evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof, and deliver such money or proceeds of evidence of money upon request and direction of such owner or owners; provided, that nothing contained herein shall prevent a community or an ambulatory currency exchange from obtaining state automobile and city vehicle licenses for a fee or service charge, or from rendering a photostat service, or from rendering a notary service either by the proprietor of the currency exchange or any one of its employees, authorized by the State of Illinois to act as a notary public, or from selling travelers cheques obtained by the currency exchange from a banking institution under a trust receipt, or from issuing money orders or from accepting for payment local utility bills; provided, further, that in accepting any such payment the community or ambulatory currency exchange shall not be deemed to act as agent for the local utility, nor shall such community or ambulatory currency exchange be authorized to receipt for such payment in the name, or on behalf, of such utility. As amended by act approved June 27, 1951. L. 1951, p. 562.



33.1 Income tax service.] § 3.1. Nothing in this Act[1] shall prevent a currency exchange from rendering State or Federal income tax service; nor shall the rendering of such service be considered a violation of this Act if such service be rendered either by the proprietor or any of his employees. Added by act approved Aug. 3, 1949. L. 1949, p. 336.

34. Application for license—Contents—Fees.] § 4. Application for such license shall be in writing under oath and in the form prescribed and furnished by the Director. Each application shall contain the following:

(a) The full name and address (both of residence and place of business) of the applicant, and if the applicant is a partnership or association, of every member thereof, and the name and business address if the applicant is a corporation;

(b) The county and municipality, with street and number, if any, where the community currency exchange is to be conducted, if the application is for a community currency exchange license;

(c) If the application is for an ambulatory currency exchange license, the name and address of the employer at each location to be served by it; and

(d) The applicant's occupation or profession; a detailed statement of his business experience for the 10 years immediately preceding his application; a detailed statement of his finances; his present or previous connection wtih any other currency exchange; whether he has ever been involved in any civil or criminal litigation, and the material facts pertaining thereto; whether he has ever been committed to any penal institutions or admitted to an institution for the care and treatment of mentally ill persons; and the nature of applicant's occupancy of the preimses to be licensed where the application is for a community currency exchange license. If the

[1] Section 31 et seq. of this chapter.

applicant is a partnership, the information specified herein shall be required of each partner. If the applicant is a corporation, the said information shall be required of each officer and director thereof.

Such application shall be accompanied by a fee of $100 which fee shall be for the cost of investigating the applicant. When the application for a community currency exchange license has been approved by the Director and the applicant so advised, an additional sum of $100 as an annual license fee for a period terminating on the last day of the current calendar year shall be paid to the Director by the applicant; provided, that the license fee for an applicant applying for such a license after July 1st of any year shall be $50 for the balance of such year.

When the application for an ambulatory currency exchange license has been approved by the Director, and such applicant so advised, such applicant shall pay an annual license fee of $25 for each and every location to be served by such applicant; provided that such license fee for an approved applicant applying for such a license after July 1st of any year shall be $12 for the balance of such year for each and every location to be served by such applicant. An approved applicant shall not be required to pay the initial investigation fee of $100 more than once. Such an approved applicant for an ambulatory currency exchange license, when applying for a license with respect to a particular location, shall file with the Director, at the time of filing an application, a letter of memorandum, which shall be in writing and under oath, signed by the owner or authorized representative of the business whose employees are to be served; such letter or memorandum shall contain a statement that such service is desired, and that the person signing the same is authorized so to do. The Director shall thereupon verify the authenticity of the letter or memorandum and the authority of the person who executed it, to do so.

Amended by P.A. 76—624, § 1, eff. Aug. 5, 1969.



34.1 Investigation to determine advisability of granting application—"Community" defined.] § 4.1. Upon receipt of an application for a license for a community currency exchange, the Director shall investigate the need of the community for the establishment of a community currency exchange at the location specified in the application.

"Community", as used in this Act,[1] means a locality where there may or can be available to the people thereof the services of a community currency exchange reasonably accessible to them. If the issuance of a license to engage in the community currency exchange business at the location specified, will not promote the convenience and advantage of the community in which the business of the applicant is proposed to be conducted, then the application shall be denied. As amended by act approved May 31, 1957. L. 1957, p. 320.

34.2 Ownership held in estate—Continuing operation by Executor etc.—License.] § 4.2. Whensoever the ownership of any Currency Exchange, theretofore licensed under the provisions of this Act,[1] shall be held or contained in any estate subject to the control and supervision of any Administrator, executor, Guardian or Conservator appointed, approved, or qualified by any Court of the State of Illinois, having jurisdiction so to do, such Administrator, Executor, Guardian, or Conservator, may, upon the entry of an order by such Court granting leave to continue the operation of such Currency Exchange, apply to the Director of Financial Institutions for a license under the provisions of this Act. When any such Administrator, Executor, Guardian or Conservator shall apply for a Currency Exchange License pursuant to the provisions of this Section, and shall otherwise fully

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[1] Sections 30—56.3 of this chapter.
Section added: L. 1945, p. 368.

[1] Section 30 et seq. of this chapter.
Section added: L. 1949, p. 336.

comply with all of the provisions of this Act relating to the application for a Currency Exchange license, the Director may issue to such applicant a Currency Exchange license. Any Currency Exchange license theretofore issued to a Currency Exchange, for which an application for a license shall be sought under the provisions of this Section, if not previously surrendered, lapsed, or revoked, shall be surrendered, revoked, or otherwise terminated before a license shall be issued pursuant to application made therefor under this Section. As amended by act approved May 31, 1957. L. 1957, p. 320.

34.3 Investigation to determine advisability of granting license for ambulatory exchange.] § 4.3 Upon receipt of an application from an ambulatory currency exchange for the conduct of its business at a location to be served by it, the Director of Financial Institutions shall investigate the need of the community for the establishment of such business at the location specified in the application. If the issuance of a license to engage in such business at the location specified will not promote the convenience and advantage of the community in which such business is proposed to be conducted, then the application shall be denied; provided, however, that any location regularly served by such ambulatory currency exchange before July 1, 1957, shall be approved, by the Director of Financial Institutions as to location, if all other requirements set forth in this act, to which this section is added, shall have been complied with by September 30, 1957. As amended by act approved July 24, 1959. L. 1959, p. 2264.

Section added: L.1957, p. 2492.

5. Bond—Conditions—Amount.] § 5. Before any license shall be issued to a community currency exchange the applicant shall file annually with and have approved by the Director a surety bond, issued by a bonding company authorized to do business in this State in the principal sum of $5,000.00. Such bond shall run to the Director and shall be for the benefit of any creditors of such currency exchange for any liability incurred by the currency



exchange on any money orders issued or sold by the currency exchange and for any liability incurred by the currency exchange for any sum or sums due to any payee or endorsee of any check, draft or money order left with the currency exchange for collection, and for any liability incurred by the currency exchange in connection with the rendering of any of the services referred to in Section 3 of this Act.[1]

If after the expiration of one year from the issuance of the license the Director shall determine that the average amount of such liability during said year has exceeded the sum of $4,000.00 and has been less than $5,000.00, the Director shall require the licensee to furnish a bond for the ensuing year to be approved by the Director in the principal sum of $4,000.00. If such average amount is in excess of $5,000.00 the bond shall be for an additional principal sum of $1,000.00 for each $1,000.00 or fraction thereof in excess of the original $5,000.00, however, the maximum amount of such bond shall not exceed the principal sum of $100,000.00. As amended by act approved July 16, 1963. L.1963, p. 1634.

36. Insurance against burglary, etc—Amount.] § 6, Every applicant for a license hereunder shall, after his application for a license has been approved, file with and have approved by the Director, a policy or policies of insurance issued by an insurance company or indemnity company authorized to do business under the law of this State, which shall insure the applicant against loss by theft, burglary, robbery or forgery in a principal sum as hereinafter provided; if the average amount of cash and liquid funds to be kept on hand in the office of the community currency exchange during the year will not be in excess of $2,500 the policy or policies shall be in the principal sum of $2,500. If such average amount will be in excess of $2,500, the policy or policies shall be for an additional principal sum of $500 for each $1,000 or fraction

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[1] Section 33 of this chapter.

thereof such excess over the original $2,500, provided that the maximum amount of such insurance shall in no event exceed the principal sum of $35,000.00. From time to time, the Director may determine the amount of cash and liquid funds on hand in the office of any community currency exchange and shall require the licensee to submit additional policies if the same are determined to be necessary in accordance with the requirements of this Section.

Any such policy or policies, with respect to forgery, may carry a condition that the community currency exchange assumes the first $50 of each claim thereunder. As amended by act approved July 28, 1961. L.1961, p. 2089. Effective Jan. 1, 1962.

37. Minimum funds to be kept available—Receiver.] § 7. Each community currency exchange shall have, at all times, a minimum sum of $3,000 of its own cash funds available for the uses and purposes of its business and said minimum sum shall be exclusive of and in addition to funds received for exchange or transfer; and in addition thereto each such licensee shall at all times have on hand an amount of liquid funds sufficient to pay on demand all outstanding money orders issued by it.

In the event a receiver is appointed in accordance with Section 15.1 of this Act,[1] and the Director determines that the business of the currency exchange should be liquidated, and if it shall appear that the said minimum sum was not on hand or available at the time of the appointment of the receiver, then the receiver shall have the right to recover in any court of competent jurisdiction from the owner or owners of such currency exchange, or from the stockholders and directors thereof if such currency exchange was operated by a corporation, said sum or that part thereof which was not on hand or available at the time of the appointment of such receiver. Nothing contained in this section shall limit or impair the liability of any bonding or insurance company on any bond or insurance policy relating to such community currency exchange issued pursuant to the requirements of this Act, nor shall anything contained herein limit or impair such other rights or remedies as the receiver may otherwise have at law or in equity. As amended by act approved May 31, 1957. L.1957, p. 320.

[1] Section 45.1 of this chapter.



38. Exchange to be conducted as separate unit.] § 8. A community or an ambulatory currency exchange shall not be conducted as a department of another business. It must be an entity, financed and conducted as a separate business unit. This shall not prevent a community or an ambulatory currency exchange from leasing a part of the premises of another business for the conduct of this business on the same premises; provided, that no community currency exchange shall be conducted on the same premises with a business whose chief source of revenue is derived from the sale of alcoholic liquor for consumption on the premises; provided, further, that no community currency exchange hereafter licensed for the first time shall share any room with any other business, trade or profession nor shall it occupy any room from which there is direct access to a room occupied by any other business, trade or profession. As amended by act approved June 27, 1951. L.1951, p. 562.

39. No tokens to be issued.] § 9. No community or ambulatory currency exchange shall issue tokens to be used in lieu of money for the purchase of goods or services from any enterprise. As amended by act approved June 27, 1951. L.1951, p. 562.

40. Qualifications of applicant—Approval—Term of license—Hearing—Denial of license—Review.] § 10. The applicant, and its officers and directors, if a corporation, shall be vouched for by 2 reputable citizens of this State setting forth that the individual mentioned is (a) personally known to them to be trustworthy and reputable, (b) that he has business experience qualifying him to competently conduct, operate, own or become associated with

a currency exchange, (c) that he has a good business reputation and is worthy of a license. Thereafter, the Director shall, upon approval of the application filed with him, issue to the applicant, qualifying under this Act, a license to operate a currency exchange. If it is a license for a community currency exchange, the same shall be valid only at the place of business specified in the application. If it is a license for an ambulatory currency exchange, it shall entitle the applicant to operate only at the location or locations specified in the application, provided the applicant shall secure separate and additional licenses for each of such locations. Such licenses shall remain in full force and effect, until they are surrendered by the licensee, or revoked, or expire, as herein provided. If the Director shall not so approve, he shall not issue such license or licenses and shall notify the applicant of such denial, retaining the $100 investigaton fee to cover the cost of investigating the applicant. The Director shall approve or deny every application hereunder within 90 days from the filing thereof; except that in respect to an application by an approved ambulatory currency exchange for a license with regard to a particular location to be served by it, the same shall be approved or denied within 20 days from the filing thereof. If the application is denied, the Director shall send by United States mail notice of such denial to the applicant at the address set forth in the application.

If an application is denied, the applicant may, within 10 days from the date of the notice of denial, make written request to the Director for a hearing on the application, and the Director shall set a time and place for the hearing. The hearing shall be set for a date after the receipt by the Director of the request for hearing, and written notice of the time and place of the hearing shall be mailed to the applicant at least 15 days before the date of the hearing. The applicant shall pay the actual cost of making the transcript of the hearing prior to the Director's issuing his decision following the hearing. If, following the hearing, the application is denied, the Director shall, within



20 days thereafter prepare and keep on file in his office a written order of denial thereof, which shall contain his findings with respect thereto and the reasons supporting the denial, and shall send by United States Mail a copy thereof to the applicant at the address set forth in the application, within 5 days after the filing of such order. A review of any such decision may be had as provided in Section 22.01 of this Act.[1]

Amended by P.A. 76-624, § 1, eff. Aug. 5, 1969.

40.1 Subpoenas—Documentary evidence — Hearing — Court order to obey subpoena.] § 10.1. For the purposes of this Act[1] the Director, and the hearing officer, as hereinafter provided, shall have power to require by subpoena the attendance and testimony of witnesses, and the production of all documentary evidence relating to any matter under hearing pursuant to this Act, and shall issue such subpoenas at the request of any interested party. The hearing officer may sign subpoenas in the name of the Director.

The Director may, in his discretion, direct that any hearing pursuant to this Act, shall be held before a competent and qualified agent of the Director, whom the Director shall designate as the hearing officer in such matter. The Director, and the hearing officer, are hereby empowered to, and shall, administer oaths and affirmations to all witnesses appearing before them. The hearing officer, upon the conclusion of the hearing before him, shall certify the evidence to the Director.

Any Circuit Court of this State, within the jurisdiction of which such hearing is carried on, may, in case of contumacy, or refusal of a witness to obey a subpoena, issue an order requiring such witness to appear before the Director, or the hearing officer, or to produce documentary

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[1] Chapter 16½, ] 52.1.
[1] Sections 30-56.3 of this chapter.
Section added: L.1951, p. 551.

evidence, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. As amended by act approved May 31, 1957. L.1957, p. 320.

41. Form of license—Posting.] §11. Such license, if issued for a community currency exchange, shall state the name of the licensee and the address at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. If issued for an ambulatory currency exchange, it shall so state, and shall state the name and office address of the licensee, and the name and address of the location or locations to be served by the licensee, and shall not be transferable and assignable. As amended by act approved June 27, 1951. L.1951, p. 562.

42. Additional bond.] § 12. If the Director shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond in like amount to be approved by the Director shall be filed by the licensee within 30 days after written demand therefor upon the licensee by the Director. As amended by act approved May 31, 1957. L.1957, p. 320.

43. Number of licenses—change of name or location.] § 13. No more than one place of business shall be maintained under the same community currency exchange license, but the Director may issue more than one license to the same licensee upon compliance with the provisions of this Act governing an original issuance of a license, for each new license.

Whenever a community currency exchange or an ambulatory currency exchange shall wish to change its name in its license, or the address set forth in any of its licenses, it shall file an application for approval thereof with the Director, and if the change is approved by the Director he shall attach to the license, in writing, a rider stating the licensee's new name or the new address.

Every application for a change of address shall be treated by the Director in the same manner as is other-



wise provided in this Act[1] for the treatment of proposed places of business or locations as contained in new applications for licenses; and if any fact or condition then exists with respect to the application for change of address, which fact or condition would otherwise authorize denial of a new application for a license because of the address of the proposed location or place of business, then such application for change of address shall not be approved.

The provisions of Section 10[2] with reference to notice, hearing and review apply to applications filed pursuant to this Section. As amended by act approved July 24, 1959. L. 1959, p. 2264.

43.1 Consolidation of places of business.] § 13.1 Whenever 2 or more licensees desire to consolidate their places of business, they shall make application for such consolidation to the Director upon a form provided by him. This application shall state: (a) the name to be adopted and the location at which the business is to be located, which name and location shall be the same as one of the consolidating licensees; (b) that the owners or all partners or all stockholders, as the case may be, of the licensees involved in the contemplated consolidation, have approved the application; (c) a certification by the secretary, if any of the licensees be corporations, that the contemplated consolidation has been approved by all of the stockholders at a properly convened stockholders meeting; (d) other relevant information the Director may require. Simultaneously with the approval of the application by the Director, the licensee or licensees who will cease doing business shall: (a) surrender their license or licenses to the Director; (b) transfer all of their assets and liabilities to the licensee continuing to operate by virtue of the application; (c) apply to the Secretary of State, if they be

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[1] Sections 30-56.3 of this chapter.
[2] Section 40 of this chapter.

corporations, for surrender of their corporate charter in accordance with the provisions of "The Business Corporation Act", filed July 13, 1933, as amended.[1]

An application for consolidation shall be approved or rejected by the Director within 30 days after receipt by him of such application and supporting documents required thereunder.

Such consolidation shall not affect suits pending in which the surrendering licensees are parties; nor shall such consolidation affect causes of action nor the rights of persons in particular; nor shall suits brought against such licensees in their former names be abated for that cause.

Nothing contained herein shall limit or prohibit any action or remedy available to a licensee or to the Director under Sections 15, 15.1 to 15.1e or 15.2 of this Act.[2] As amended by act approved Aug. 19, 1961. L. 1961, p. 3522.

44. Annual license fee.] § 14. Every licensee, shall, on or before November 15, pay to the Director the annual license fee or fees for the next succeeding calendar year and shall at the same time file with the Director the annual report required by Section 16 of this Act,[1] and the annual bond or bonds, and the insurance policy or policies as and if required by this Act. The annual license fee for each community currency exchange shall be $100. The annual license fee for each location served by an ambulatory currency exchange shall be $25.
Amended by P.A. 76-624, § 1, eff. Aug. 5, 1969.

45. Revocation of license—Surrender—New license—Hearing—Notice of revocation—Review.] § 15. The Director may, upon ten (10) days notice to the licensee by

[1] Chapter 32, §157.1 et seq.
[2] Section45, 45.1 to 45.1e, 45.2 of this chapter.
Section added: L. 1953, p. 985.
[1] Chapter 16½ § 46.



United States mail directed to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard prior to such action, revoke any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the required bond or bonds or insurance policy or policies or to comply with any order, decision, or finding of the Director made pursuant to this Act;[1] or that

(b) The licensee has violated any provision of this Act or any regulation or direction made by the Director under this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Director in refusing the issuance of the license; or that

(d) The licensee has not operated the currency exchange or at the location licensed, for a period of sixty consecutive days, unless the licensee was prevented from operating during such period by reason of events or acts beyond the licensee's control.

The Director may revoke only the particular license or licenses for particular places of business or locations with respect to which grounds for revocation may occur or exist; except that if he shall find that such grounds for revocation are of general application to all places of business or locations, or that such grounds for revocation have occurred or exist with respect to a substantial number of places of business or locations, he may revoke all of the licenses issued to such licensee.

A licensee may surrender any license by delivering to the Director written notice that he, they or it thereby surrenders such license, but such surrender shall not affect

[1] Sections 30-56.3 of this chapter.

such licensee's civil or criminal liability for acts committed prior to such surrender, or affect the liability on his, their or its policy or policies of insurance, required by this Act, or entitle such licensee to a return of any part of the annual license fee or fees.

Every license issued hereunder shall remain in force until the same shall expire, or shall have been surrendered or revoked in accordance with this Act, but the Director may on his own motion, issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition than exists which clearly would have warranted the Director in refusing originally the issuance of such license under this Act.

No license shall be revoked until the licensee has had notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the Director shall within twenty (20) days thereafter, prepare and keep on file in his office, a written order or decision of revocation which shall contain his findings with respect thereto and the reasons supporting the revocation and shall send by United States mail a copy thereof to the licensee at the address set forth in the license within five (5) days after the filing in his office of such order, finding or decision. A review of any such order, finding or decision may be had as provided in Section 22.01 of this Act.[2] As amended by act approved July 24, 1959. L.1959, p. 2264.

45.1 Receiver — Appointment — Security — Notice to claimants — Injunction.] § 15.1 If the Director determines that any licensee is insolvent or is violating this Act, he shall appoint a receiver, who shall, under his direction, for the purpose of receivership, take possession of and title to the books, records and assets of every description of the community currency exchange. The Director shall require of the receiver such security as he deems proper and, upon appointment of the receiver, shall have published, once each week for 4 consecutive

[2] Section 52.1 of this chapter.



weeks in a newspaper having a general circulation in the community, a notice calling on all persons who have claims against the community currency exchange, to present them to the receiver.

Within 10 days after the receiver takes possession of the property, the licensee may apply to the Circuit Court of Sangamon County to enjoin further proceedings in the premises.

The receiver may operate the community currency exchange until the Director determines that possession should be restored to the licensee or that the business should be liquidated. As amended by act approved Aug. 19, 1961. L.1961, p. 3522.

Added by L.1945, p. 368.

45.1a Bill of attorney general for orderly liquidation and dissolution—Injunction—List of claims.] § 15.1a. If the Director determines that a business in receivership should be liquidated, he shall direct the Attorney General to file a bill in the Circuit Court of the county in which such community currency exchange is located, in the name of the People of the State of Illinois, for the orderly liquidation and dissolution of the community currency exchange and for an injunction restraining the licensee or the officers and directors thereof from continuing the operation of the community currency exchange.

The receiver shall, 30 days from the day the Director determines that the business should be liquidated, file with the Director and with the clerk of such court as has charge of the liquidation, a correct list of all creditors who have not presented their claims. The list shall show the amount of the claim after allowing all just credits, deductions and set-offs as shown by the books of the currency exchange. These claims shall be deemed proven unless objections are filed by some interested party within the time fixed by the Director or court that has charge of the liquidation. Added by act approved Aug. 19, 1961. L.1961, p. 3522.

45.1b Dividends.] § 15.1b. The Director may make a ratable dividend of the moneys collected by the receiver on all claims against a community currency exchange being liquidated that have been proved to his satisfaction or adjudicated in a court of competent jurisdiction whenever moneys are available for distribution.

All unclaimed dividends shall be deposited with the Director to be paid out by him when proper claims therefor are presented to the Director, and the Director shall pay the same out of such sums or funds so deposited with him. After one year from the final dissolution of the currency exchange, the Director shall make a pro-rata distribution thereof to those claimants who have accepted dividends until such claim or claims are paid in full, and if any of the monies shall then remain in his hands, the Director shall distribute same pro rata to the owner, owners or stockholders of the currency exchange. The Director shall deduct from the funds so deposited with him the expenses of distributing same. Added by act approved Aug. 19, 1961. L.1961, p. 3522.

45.1c Powers of receiver.] § 15.1c. Upon the order of a court of competent jurisdiction of the county wherein the community currency exchange being liquidated is located, the receiver may sell or compound any bad or doubtful debt, and on like order may sell the personal property of the community currency exchange on such terms as the court approves. The receiver shall succeed to whatever rights or remedies the unsecured creditors of the currency exchange may have against the owner or owners, operators, stockholders, directors, or officers thereof, arising out of their claims against the currency exchange, but nothing herein contained shall prevent such creditors from filing their claims in the liquidation proceeding. The receiver may enforce such rights or remedies in any court of competent jurisdiction. Added by act approved Aug. 19, 1961. L.1961, p. 3522.

45.1d Books and records of receivership—Expenses.] § 15.1d. At the close of a receivership, the receiver shall



turn over to the Director all books of account and ledgers of such currency exchange for preservation. All records of such receiverships heretofore and hereafter received by the Director shall be held by him for a period of 2 years after the close of the receivership and at the termination of the 2 year period may then be destroyed.

All expenses of the receivership, including reasonable receiver's, solicitor's and attorney's fees approved by the Director, and all expenses of any preliminary or other examinations into the condition of the community currency exchange or receivership, and all expenses incident to the possession and control of any property or records of the community currency exchange incurred by the Director shall be paid out of the assets of the community currency exchange. The foregoing expenses shall be paid prior to and ahead of all claims. Added by act approved Aug. 19, 1961. L.1961, p. 3522.

45.1e Pending actions.] § 15.1e. Upon the filing of a complaint by the Attorney General for the orderly liquidation and dissolution of a community currency exchange, as provided in Section 15.1a, all pending suits and actions upon unsecured claims against such currency exchange shall abate; however, nothing contained herein shall prevent such claimants from filing their claims in the liquidation proceeding. In the event a suit or an action is instituted or maintained by the receiver on any bond or policy of insurance issued pursuant to the requirements of this Act, the bonding or insurance company sued, shall not have the right to interpose or maintain any counterclaim based upon subrogation, or upon any express or implied agreement of, or right to, indemnity or exoneration, or upon any other express or implied agreement with, or right against, the currency exchange. Nothing herein contained shall prevent such bonding or insurance company from filing such claim in the liquidation proceeding. Added by act approved Aug. 19, 1961. L.1961, p. 3522

45.2 Closing up business — Procedure — Deposit — Notice.] § 15.2. No community currency exchange shall

determine its affairs and close up its business unless it shall first deposit with the Director an amount of money equal to the whole of its debts, liabilities and lawful demands against it including the costs and expenses of this proceeding, and shall surrender to the Director its community currency exchange license, and shall file with the Director a statement of termination signed by the licensee of such community currency exchange, containing a pronouncement of intent to close up its business and liquidate its liabilities, and also containing a sworn list itemizing in full all such debts, liabilities and lawful demands against it. Corporate licensees shall attach to, and make a part of such statement of termination, a copy of a resolution providing for the determination and closing up of the licensee's affairs, certified by the secretary of such licensee and duly adopted at a shareholders' meeting by the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting. Upon the filing with the Director of a statement of termination the Director shall cause notice thereof to be published once each week for three consecutive weeks in a public newspaper of general circulation published in the city or village where such community currency exchange is located, and if no newpaper shall be there published, then in a public newspaper of general circulation nearest to said city or village; and such publication shall give notice that the debts, liabilities and lawful demands against such community currency exchange will be redeemed by the Director on demand in writing made by the owner thereof, at any time within three years from the date of first publication. After the expiration of such three year period, the Director shall return to the person or persons designated in the statement of termination to receive such repayment and in the proportion therein specified, any balance of money then remaining in his possession, if any there be, after first deducting therefrom all unpaid costs and expenses incurred in connection with this proceeding. The Director shall receive for his services, exclusive of costs and expenses, two per cent of any amount up to $5,000.00, and



one per cent of any amount in excess of $5,000.00, deposited with him hereunder by any one community currency exchange. Nothing contained herein shall affect or impair the liability of any bonding or insurance company on any bond or insurance policy issued under this Act relating to such community currency exchange. As amended by act approved May 31, 1957. L.1957, p. 320.

Section added: L.1951, p. 551.

46. Annual report — Investigations — Costs.] § 16. Each licensee shall annually, on or before the 15th day of November, file a report with the Director for the fiscal year period from October 1st through September 30th (which shall be used only for the official purposes of the Director) giving such relevant information as the Director may reasonably require concerning, and for the purpose of examining, the business and operations during the preceding fiscal year period of each licensed currency exchange conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Director and the Director may at any time and shall at least once in each year investigate the currency exchange business of any licensee and of every person, partnership, association and corporation who or which shall be engaged in the business of operating a currency exchange. For that purpose, the Director shall have free access to the offices and places of business and to such records of all such persons, firms, partnerships, associations and corporations and to the officers and directors thereof that shall relate to such currency exchange business. The Director may at any time, and shall at least, once a year, inspect the locations served by an ambulatory currency exchange, for the purpose of determining whether such currency exchange is complying with the provisions of this Act[1] at each location served. The Director may require by subpoena the attendance of and examine under oath all persons whose testimony he may require relative to such business, and in such cases the

[1] Chapter 16½, § 30 et seq.

Director, or any qualified representative of the Director whom the Director may designate, may administer oaths to all such persons called as witnesses, and the Director, or any such qualified representative of the Director, may conduct such examinations, and there shall be paid to the Director for each such examination a fee of $50 for each day or part thereof for each qualified representative designated and required to conduct the examination; provided, however, that in the case of an ambulatory currency exchange, such fee shall not be increased by reason of the number of locations served by it.
Amended by P.A. 76-624, § 1, eff. Aug. 5, 1969.

47. Records.] § 17. A. Every licensee shall keep and use in his business such books, accounts and records as will enable the Director to determine whether such licensee is complying with the provisions of this Act and with the rules, regulations and directions made by the Director hereunder.

B. Each licensee shall record or cause to be recorded the following information with respect to each money order it sells or issues: (1) The amount; (2) the month and year of sale or issuance; and (3) the serial number.

Each licensee shall perserve the record required by this subsection for at least 17 years or until the money order to which it pertains is returned to the licensee. Each money order returned to the licensee shall be preserved for not less than 3 years from the month and year of sale or issuance by the licensee. The licensee shall keep the record, or an authentic microfilm copy thereof, required to be preserved by this subsection within this state at a place readily accessible to the Director and his representatives. If a licensee sells or transfers his business at a location or an address, his obligations under this paragraph devolve upon the sucessor licensee and subsequent licensees, if any, at such location or address. If a licensee ceases to do business in this state, he shall deposit the records and money orders he is required to preserve, with



the Director. As amended by act approved July 16, 1963. L.1963, p. 1634.

48. Permanent address.] § 18. The applicant for a community currency exchange license shall have a permanent address as evidenced by a lease of at least six months duration or other suitable evidence of permanency, and the license issued, pursuant to the application shall be valid only at that address or any new address approved by the Director. As amended by act approved May 31, 1957. L.1957, p. 320.

49. Rules and regulations—Record—Copies.] § 19. The Director may make and enforce such reasonable, relevant regulations, directions, orders, decisions and findings as may be necessary for the execution and enforcement of this Act and the purposes sought to be attained herein. All such regulations, directions, orders, decisions and findings shall be filed and entered by the Director in an indexed permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. All regulations and directions which are of a general character, shall be printed and copies thereof mailed to all licensees within 10 days after filing as aforesaid. Copies of all findings, orders and decisions shall be mailed to the parties affected thereby by United States mail within 5 days of such filing. As amended by act approved May 31, 1957. L. 1957, p. 320.

49.1 Armed guard.] § 19.1. Whenever an ambulatory currency exchange shall be actively engaged at any place or station on a location licensed under this Act[1] in the cashing of checks other than from within an armored vehicle, such currency exchange shall provide at least one armed guard at each such place or station in addition to the person or persons cashing checks. Added by act approved June 27, 1951. L.1951, p. 562.

49.2 Surety bond.] § 19.2. Before any license or renewal of license shall be issued for any location served

[1] Sections 30—56.3 of this chapter.

by an ambulatory currency exchange, the applicant thereof shall file with and have approved by the Director a surety bond for each such location, issued by a bonding or insurance company, licensed to do business in this State, in the penal sum of $2,000.00. The bond shall be conditioned that the licensee serving the location shall comply with Section 19.1 of this Act[1] and shall pay all lawful claims for money or other property loss, or bodily injury, suffered in the course and by reason of a holdup at such location, that shall occur at the time or times when said licensee failed to comply with said Section 19.1. Such bond shall run to the Director and shall inure to the benefit of any person or persons who shall establish a lawful claim or claims as aforesaid. The applicant shall have the right, at his, their, or its option, to file in lieu of the bond or bonds required by this section, a blanket surety bond, which, he, they, or it shall have approved by the Director, issued by a bonding or insurance company, licensed to do business in this State, covering all the locations served and to be served by such applicant, in a penal sum of not to exceed $100,000.00, conditioned and payable as aforesaid, and specifying that the liability thereunder for each location shall be limited to $2,000.00. As amended by act approved May 31, 1957. L. 1957, p. 320.

50. False swearing.] § 20. Every person having taken an oath in any proceeding or matter wherein an oath is required by this Act,[1] who shall swear wilfully, corruptly or falsely in a matter material to the issue or point in question, or shall suborn any other person to swear as aforesaid, shall be guilty of perjury or subornation of perjury, as the case may be.

51. Notices may be mailed.] § 21. Except as otherwise provided for in this Act, whenever the Director is required to give notice to any applicant or licensee, such

[1] Section 49.1 of this chapter.
Section added: L. 1951, p. 562.
[1] Sections 31-56 of this chapter.



requirement shall be complied with if, within the time fixed herein, such notice shall be enclosed in an envelope plainly addressed to such applicant or licensee, as the case may be, at the address set forth in the application or license, as the case may be, United States postage fully prepaid, and deposited, registered, in the United States mail. As amended by act approved May 31, 1957. L.1957, p. 320.

52. § 22. Repealed by act approved June 9, 1949. L. 1949, p. 335.

52.1 Review under Administrative Review Act.] § 22.01. All final administrative decisions of the Director hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act", approved May 8, 1945, and all amendments and modifications thereof,[1] and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 1 of the "Administrative Review Act."[2] The person seeking judicial review shall pay to the Director the costs of preparing and certifying the record of proceedings before the Director. As amended by act approved July 16, 1963. L.1963, p. 1634.

52.2 § 22.02 Repeated by act approved Aug. 24, 1965. L.1965, p. 3759.

52.3 Board of Currency Exchange Advisors—Establishment—Members—Tenure—Meetings—Powers and duties.] § 22.03. There shall be a Board of Currency Exchange Advisers composed of five members, to be appointed by the Governor, who are familiar with and associated in the field of currency exchanges, three of whom shall have been actively engaged in the management of currency exchanges for at least five years prior to the date of appointment. A chairman of the Advisory Board shall be chosen annually from the membership of the Advisory

[1] Chapter 110, § 264 et seq.
[2] Chapter 110, § 264.
Section added: L.1949, p. 335.

Board by a majority of the members of the Board at the first meeting of the Board each year. Initial members shall be appointed to the Board as follows:

Two members to serve until the third Monday in January, 1959;

Three members to serve until the third Monday in January, 1961;

As terms of members so appointed expire, their successors shall be appointed for terms to expire the third Monday in January four years thereafter. All members shall serve until their respective successors are appointed and qualified.

Meetings of the Advisory Board created in this Act shall be held on the call of the Chairman thereof or upon call signed by any two members thereof, or upon call by the Director. A majority of the members of the Board shall constitute a quorum.

Members of the Advisory Board shall receive no compensation for their services, but shall be reimbursed for necessary expenses.

In addition to the powers and duties created elsewhere in this Act, the Advisory Board shall have the following powers and duties:

(1) To obtain from the Director such reports concerning the supervision and regulation of currency exchanges as they consider desirable.

(2) To advise the Governor and the Director on problems concerning currency exchanges.

(3) To foster the interest and cooperation of currency exchanges in improvement of their services to the people of the State of Illinois.

(4) To advise the Governor and the Director upon appointments and employment of personnel in connection with the supervision and regulation of currency exchanges. Added by act approved May 31, 1957. L.1957, p. 320.



53. Fraudulent taking or secreting money or property.] § 23. If any licensee, or agent or employee of a licensee, fraudulently takes and secretes any money, note, bill, bond or other property belonging to another and in the possession and custody of such licensee as agent or otherwise, he shall be guilty of theft and punished accordingly. As amended by act approved July 28, 1961. L.1961, p. 2089.

54. Violations.] § 24. Any person, firm, association, partnership or corporation who or which shall violate any provision of this Act for which no other penalty is herein prescribed shall be guilty of a petty offense, and each violation shall constitute a separate offense.
Amended by P.A. 77-2320, § 1, eff. Jan. 1, 1973.

55. Approval of location.] § 25. Any community currency exchange in existence upon the date of the passage of this Act shall be approved by the Director as to location, if all other requirements set forth in this Act shall have been complied with. As amended by act approved May 31, 1957. L.1957, p. 320.

[§ 26. Appropriation.]

56. Construction of act.] § 27. Nothing contained in this Act[1] shall be construed so as to limit the power of

Construction. Arnold v. City of Chicago, 387-532, 56 N.E.2d 795; Krebs v. Thompson, 387-471, 56 N.E.2d 761.

municipalities, to license and tax community currency exchanges, and to regulate their location and operation in a manner not inconsistent with this Act.

56.1 Application of certain provisions.] § 28. Unless an ambulatory currency exchange shall engage in the business of selling or issuing money orders under his, their or its name, or any money orders other than those excepted in Section 1 of this Act,[1] Sections 5, 6, 7, 15.1 and

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[1] Sections 31-56 of this chapter.

[1]Section 31 of this chapter.

15.2 of this Act[2] shall not be applicable to it. Otherwise, said sections shall apply to it, if it shall engage in such business. Amended by act approved July 24, 1959. L.1959, p. 2264.

56.2 Unlicensed currency exchanges—Injunction.] § 29. The operation of any unlicensed community or ambulatory currency exchange, or the unlawful conduct or operation of any licensed community or ambulatory currency exchange, is hereby declared to constitute unfair competition with licensed and legally operated currency exchanges doing business in the same community. Any licensee operating legally under this Act[1] in the same community shall have the right to apply to any court of competent jurisdiction for and obtain an injunction restraining such unfair competition. Added by act approved June 27, 1951. L. 1951, p. 562.

56.3 Partial invalidity.] § 30. If any part or provision of this Act[1] shall be declared unconstitutional, the unconstitutionality of such part or provision shall not invalidate the constitutional provisions of this Act. Added by act approved June 27, 1951. L.1951, p. 562.

## COMMON TRUST FUND ACT

AN ACT concerning common trust funds. Approved July 29, 1943. L.1943, vol. 1, p. 230.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

57. § 1. Short title.) This Act[1] may be cited as the "Common Trust Fund Act".

58. § 2. Definitions.) As used in this Act, unless the context otherwise requires:

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[2] Sections 35-27 of this chapter.
Section added: L.1951, p. 562.

[1] Sections 30-56.3 of this chapter.

[1] Sections 30-56.3 of this chapter.

[1] Sections 57-63 of this chapter.



(a) "Bank or trust company" means any state bank, any national bank, any trust company or any other corporation, qualified to act as a fiduciary in this State.

(b) "Fiduciary" means a bank or trust company acting in any of the following capacities, namely: testamentary trustee, trustee appointed by any court, trustee or agent under any written agreement, declaration or instrument of trust, executor, administrator, guardian, and conservator.

(c) "Common trust fund" means a fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a fiduciary or co-fiduciary. Amended by P.A. 78-790, § 1, eff. Oct. 1, 1973.

59. § 3. Establishment of common trust fund.) Any bank or trust company may, at and during such time as it is qualified to act as a fiduciary in this State, establish, maintain and administer one or more common trust funds for the purpose of furnishing investments to itself as a fiduciary, or to itself and another or others as co-fiduciaries, and in its capacity as a fiduciary or co-fiduciary, whether such fiduciary capacity arose before or is created after this Act takes effect, may invest funds which it holds for investment in such capacity in interests in one or more common trust funds, subject to the following limitations:

(a) In the case of a fiduciary other than an administrator, guardian or conservator, the investment may be made if such investment is not expressly prohibited by the instrument, judgment, decree or order creating such fiduciary relationship, or by an amendment thereof, and, if under the instrument, judgment, decree or order creating such fiduciary relationship, or an amendment thereof, the funds so held for investment might properly be invested in the investments in which the common trust fund may be invested under the plan established for such common trust fund, and if, in the case of co-fiduciaries, the bank or

trust company procures the consent of its co-fiduciary or co-fiduciaries to the investment in such interests.

271. § 21. Effective date.) This Act shall become effective on the first day of January 1958.

272. § 22. Title of act.) This Act shall be known and may be cited as the Financial Planning and Management Service Act.

[§ 23. Appropriation.]



## APPENDIX C

### SALE OF EXCHANGE ACT

AN ACT in relation to the definition, licensing and regulation of the business of selling or issuing checks, drafts, money orders or other instruments for the transmission or payment of money or credit at multiple locations through agents, subagents or representatives, as a service or for a fee or other consideration, to provide for the administration of this Act, to provide penalties for the violation thereof and to make an appropriation therefor. Approved July 8, 1957. L. 1957, p. 1749.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

301. § 1. Policy of act. The General Assembly has found and declares:

that checks, drafts and money orders are bills of exchange used in the transmission or payment of money or credit;

that such instruments are widely used by the public as a process of settling accounts or debts;

that sellers and issuers of such instruments receive, in the aggregate, large sums of money from the public;

that the public suffers when any default occurs in the payment of such instruments;

that there is a high degree of public interest in the integrity, experience and financial responsibility and reliability of those engaged in the various types of businesses dealing in such instruments which has long been recognized by the General Assembly by the adoption of laws regulating such businesses;

that the business of selling or issuing such instruments at multiple locations through agents, subagents, or repre-

sentatives is a business which affects the public interest and which is not presently subject to regulation, although businesses which sell or issue such instruments at a single location are licensed and regulated under "An Act in relation to the regulation of community currency exchanges and the operators and employees thereof, and to make an appropriation therefor" approved June 30, 1943, as amended;[1]

302. § 2. Title. This Act shall be known and may be cited as the "Sale of Exchange Act."

303. § 3. Definitions.) Unless the context otherwise requires:

"Director" means the Director of Financial Institutions.

"Exchange" means any check, draft, money order or other written instrument for the transmission or payment of money or credit. It does not mean money or currency of any nation.

"Fiscal year" means the period from October 1 through the next succeeding September 30.

"Issuing" means the act of drawing any instrument of exchange by a person who engages in the business of drawing such instruments as a service or for a fee or other consideration.

"Licensee" means any person licensed under this Act.

"Money Order" means a bill of exchange issued at the request and for the use or benefit of a person other than the issuer and representing an unconditional order or obligation in writing of the issuer to pay a sum certain in money on demand to order or to bearer. It does not mean instruments requiring counter signature for validation after issuance.

"Net Worth" means excess of assets over liabilities as determined by accepted accounting practices.

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[1] Section 31 et seq. of this chapter.



"Person" means any individual, partnership, joint stock association, trust, unincorporated association or corporation. As amended by act approved July 17, 1959. L.1959, p. 1291.

304. § 4. Necessity of license—Violations.) No person shall engage in the business of selling or issuing exchange at multiple locations through agents, subagents or representatives as a service or for a fee or other consideration without first securing a license to do so from the Director, except that no license under this Act shall be required of any agent, subagent or representative of a licensee, or employee of such agent, subagent or representative, who acts on behalf of such licensee in the sale of exchange of which the licensee is the issuer.

Any person who violates this section shall be guilty of a Class A Misdemeanor. Each day such violation continues shall constitute a separate offense.
Amended by P.A. 77-2324, § 1, eff. Jan. 1, 1973.

305. § 5. To whom act not applicable. Nothing in this Act shall apply to the receipt of money by any incorporated telegraph company at any agency or office of such company for immediate transmission by telegraph, or to the receipt of money for the purpose of transmitting or transferring it to foreign countries by a person licensed to do so under the provisions of "An Act in relation to the buying and selling of foreign exchange and the transmission or transfer of money to foreign countries," approved June 23, 1923, as amended.[1]

Nothing in this Act shall apply to the sale or issuance of exchange by:

(a) Governmental departments.

(b) Corporations organized under the general banking laws of this State or of the United States.

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[1] Probably should read "June 28, 1923, as amended." See Chapter 57¼ § 1 et seq.

(c) Persons licensed under "An Act in relation to the definition, licensing and regulation or community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof", approved June 30, 1943, as amended.[2]

306. § 6. Application for license.) Application for a license shall be made to the Director on forms prepared by him and shall be under oath.

The application shall:

(a) State the name of the applicant and the address of his principal office.

(b) Contain evidence of the good moral character of the applicant if the appellant is an individual, or of the partners, if the applicant is a partnership; if the applicant is a joint stock association, trust, unincorporated association or corporation, the secretary or any assistant secretary thereof shall certify the name and address of each of the officers, directors, trustees or other managing officials, together with a designation of the office or offices held by each and evidence of the good moral character of each and shall submit such certificate to the Director with the application.

(c) Be accompanied by evidence of the ability of the applicant to meet the requirements of this Act.

(d) Be accompanied by an investigation fee of $100. No investigation fee shall be refunded. As amended by act approved July 17, 1959. L.1959, p. 1291.

307. § 7. Investigation of applicant—Issuance of license.) Upon the filing of an application, the Director shall investigate the applicant and if he finds that the applicant is of good moral character and financially responsible and can meet the requirements of this Act, he shall give notice in writing of his approval of said

[2] Section 31 et seq. of this chapter.



application to the applicant, who shall within thirty days post the required bond and pay the required license fee, whereupon the Director shall forthwith issue to the applicant a license to engage in the business of selling or issuing exchange subject to the provisions of this Act.

No license shall be issued to an applicant:

(a) If a natural person, unless he is over twenty-one years of age;

(b) If a partnership, unless each of the partners is over twenty-one years of age;

(c) If a joint stock association, trust, unincorporated association or corporation, unless each of the officers, directors, trustees or other managing officials is over twenty-one years of age.

No license shall be issued or renewed to any person who is engaged in any business, the major portion of which involves the processing, manufacture or purchase and sale of commodities or articles of tangible personal property.

No application shall be denied unless the applicant has had notice of a hearing on said application and an opportunity to be heard thereon. If the application is denied, the Director shall, within thirty days thereafter, prepare and file in his office a written order of denial which shall contain his findings and reasons supporting the denial, and shall within ten days after the filing of such order, notify the applicant and send him a copy of such order. As amended by act approved July 17, 1959. L.1959, p. 1291.

308. § 8. License fees—Annual renewal. Before any license is issued or renewed the applicant or licensee shall pay an annual license fee in the amount of $50 plus $6 for each location within this State at which exchange of the licensee is issued or sold.

A license issued hereunder shall remain in effect until surrendered by the licensee or revoked, and may be re-

newed from year to year upon payment of the fee required in this section, provided the licensee continues to comply with all provisions of this Act and of all regulations hereunder. As amended by act approved July 15, 1963. L.1963, p. 1468.

309. § 9. Bond—Condition—Amount.) Each approved applicant shall furnish a corporate surety bond in the minimum principal sum of $100,000 issued by a bonding company or insurance company authorized to do business in this state, in which he is named as obligor, to be approved by the Director, which shall run to the State for the use and benefit of the State and of any creditor of a licensee for any liability incurred on any exchange issued by the licensee. The bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Act and will honestly and faithfully apply all funds received and perform all obligations and undertakings for exchange issued and sold under this Act and will pay to the State and to any person all money that becomes due and owing to the State or to such person under the provisions of this Act because of any exchange sold or issued by such licensee. The bond shall remain in force and effect until the surety is released from liability by the Director or until the bond is cancelled by the surety, which cancellation may be had only upon thirty days' written notice to the Director. Such cancellation shall not affect any liability incurred or accrued prior to the termination of the thirty-day period. As amended by act approved July 17, 1959. L.1959, p. 1291.

310. § 10. Additional bond—Maximum bond—Securities in lieu of bond.) If the dollar amount of the average outstanding liabilities of any licensee from business for which he is licensed hereunder exceeds the principal sum of the bond theretofore filed by the licensee and approved by the Director, such licensee shall, within thirty days from the date its annual report is due, furnish an additional bond to be approved by the Director in an amount sufficient to increase the aggregate sum



of all bonds filed by such licensee to an amount not less than such average amount of liability to the nearest $5,000; provided that the maximum aggregate amount of all bonds required under this Act need not exceed in any event the principal sum of $1,000,000. The average amount of such outstanding liabilities of any licensee may be calculated by dividing by 75 the annual dollar amount of exchange sold or issued to the public, or the Director may use such method as may conform to accepted accounting practices and reasonably reflect the average of such outstanding liabilities of any such licensee during any such year.

If the Director shall find at any time that any bond required under this Act is insecure or exhausted, an additional bond in like amount to be approved by the Director shall be filed by the licensee within ten days after written demand therefor by the Director.

In lieu of any bond required under this Act, the licensee may deposit with the Director securities with a par value equal to the amount of any such bond. Such securities shall consist of (1) general obligations of or fully guaranteed by the United States or of any agency or instrumentality of or corporation wholly owned by the United States directly or indirectly; or (2) direct general obligations of the State of Illinois, or of any county, city, town, village, school district, sanitary district, park district or other political subdivision or municipal corporation of the State of Illinois. Such securities shall be held by the Director to secure the same obligation as would any bond, required by this Act. The securities so deposited may be exchanged from time to time for other securities receivable as aforesaid. All said securities shall be subject to sale and transfer and to the disposal of the proceeds by said Director only on the order of a court of competent jurisdiction. So long as the licensee so depositing shall continue solvent, such licensee shall be permitted to receive the interest or dividends on said deposit. The Director may provide for custody of such securities by any qualified trust com-

pany or bank located in the State of Illinois, or by any Federal Reserve Bank. The compensation, if any, of the custodian for acting as such under this section, shall be paid by the depositing licensee. As amended by act approved July 17, 1959. L.1959, p. 1291.

311. § 11. Minimum net worth.) Each licensee under this Act shall have a minimum net worth of $100,000, at least $50,000 of which shall be in cash available at all times for the uses and purposes of the business licensed hereunder and which may be demonstrated by certified financial statements satisfactory to the Director, provided that the Director may require that any item claimed as an asset or liability be verified by an accountant or appraiser acceptable to him and at the expense of the applicant or licensee. As amended by act approved July 17, 1959. L.1959, p. 1291.

312. § 12. Annual report.) Each licensee shall annually, or or before the first days of December, file a report with the Director for the preceding fiscal year. Such report shall, if the Director requests, list the name and address of each agent, subagent or representative authorized by the licensee, as of the close of business on the last day of the fiscal year preceding such report, to engage in the sale of money orders of which the licensee is the issuer, together with a designation and the date of authorization of such agents, subagents or representatives who were authorized subsequent to June 30, 1957 and who have sold or issued less than 2,000 such instruments in number during the period set forth in and as otherwise provided by Section 17.[1] The Director may require that such report include the annual dollar amount of exchange sold by the licensee in the State of Illinois during the preceding fiscal year or the average amount of outstanding liabilities of such licensee from businesses for which he is licensed hereunder or both such amounts. As amended by act approved July 17, 1959. L.1959, p. 1291.

[1] Section 317 of this chapter.



313. §13. Records.) A. Each licensee shall keep such books, accounts and records as will enable the Director to determine the proper amount of the bond and license fee to be required of such licensee.

B. Each licensee shall also record or cause to be recorded the following information with respect to each instrument of exchange it sells or issues: (1) The amount; (2) the month and year of sale or issuance; and (3) the serial number.

Each licensee shall preserve the record required by this subsection for at least 17 years or until the exchange to which it pertains is returned to the licensee. All exchange returned to the licensee shall be preserved for not less than 3 years from the month and year of sale or issuance by the licensee. The licensee shall keep the record or an authentic microfilm copy thereof required to be preserved by this subsection, within this state at a location readily accessible to the Director and his representatives. If a licensee sells or transfers his business at a location, his obligations under this paragraph devolve upon the successor licensee and subsequent successor licensees, if any, at such location. If a licensee ceases to do business in this state, he shall deposit the records and exchange he is required to preserve, with the Director. As amended by act approved July 15, 1963. L.1963, p. 1468.

314. § 14. Annual examination.) The Director may examine the books and records of each licensee at least once a year for the purpose of determining the amount of the bond to be filed and the amount of the license fee to be paid by such licensee. For that purpose, the Director shall have free access to the offices and places of business and to such records of such licensee that relate to the business for which he is licensed under this Act. There shall be paid to the Director for such examination a fee of $50. for each day or part thereof for each qualified representative of the Director required to conduct the examination; provided that whenever it shall be necessary for the Director to travel out of this state to

make such examination the full expense of such examination shall be paid by the licensee. In lieu of any examination required hereunder to be made by the Director, the Director may accept the audit of a certified public accountant, provided that the costs of such audit shall be borne by the licensee, that the scope of such audit shall be at least equal to the scope of the examination required by the Director, and that the Director shall have received prior notice in writing that the licensee is having the audit prepared in lieu of examination by the Director and the Director shall have given prior approval of the certified public accountant making the audit. As amended by act approved July 17, 1959. L.1959, p. 1291.

315. § 15. Investigation of licensee's business.) When the Director shall have reasonable cause to believe that the provisions of this Act are not being complied with or that the financial resources of any licensee may be insufficient to pay promptly all obligations which said licensee shall have incurred in operating the business for which it is licensed under this Act, the Director shall investigate the business, including the books and records of any such licensee, and may require the licensee to furnish such additional reports relating to his said business as the Director may require to effectuate the provisions of this Act. As amended by act approved July 17, 1959. L.1959, p. 1291.

316. § 16. Multiple locations. Each licensee may conduct his business at such locations within this State and through or by means of such employees, agents, subagents or representatives as he may from time to time designate and appoint.

317. § 17. Sale of money orders—Evidence of financial irresponsibility.) If the total number of money orders sold or issued by any agent, subagent or representative of a licensee as a service or for a fee or other consideration in good faith at any one location authorized by the licensee subsequent to June 30, 1957, shall be less than 2000 in number during any full fiscal year after the



time such agent, subagent or representative starts to so sell or issue such instruments at that location such fact shall be prima facie evidence that continuation of the sale or issuance of money orders at such location may contribute to the financial irresponsibility of the licensee and thereby endanger the public welfare and the Director may issue a written order to the licensee to terminate such sale or issuance at such location as of a time not sooner than ten days from the date of such order. Within five days of the receipt of such order the licensee may make written demand for a hearing. If such demand is so made, such order shall not be effective unless after such hearing the Director finds that such prima facie evidence is not rebutted.

This section shall apply only to locations within cities in the State of Illinois having a population of more than 1,000,000 inhabitants.

This section shall not apply to corporations organized under the banking laws of this State or of the United States, Railway Express Agencies and offices, telegraph company agencies and offices, railroad tickets agencies and offices, travel agencies and offices, and military and naval bases and installations, whenever authorized by a licensee hereunder to engage in the sale of money orders of which the licensee is the issuer. As amended by act approved July 17, 1959. L.1959, p. 1291.

318. § 18. Revocation or surrender of license.) The Director may, upon ten days' notice to the licensee, stating the contemplated action and in general the grounds therefor, hold a hearing at which the licensee shall have a reasonable opportunity to be heard, for the purpose of determining whether a license should be revoked. After such hearing the Director may revoke any license issued hereunder if he finds that:

(a) The licensee has failed to pay the annual license fee or to maintain the required bond; or

(b) The licensee has failed to comply with any order, decision or finding of the Director made pursuant to this Act; or

(c) The licensee has violated any provision of this Act; or

(d) Any fact or condition exists which, if it had existed at the time of the original application for a license, would have warranted the Director in refusing its issuance.

A licensee may surrender any license by delivering to the Director written notice that he surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender, or affect the liability on any bond, or entitle such licensee to a return of any part of any license fee. As amended by act approved July 17, 1959. L.1959, p. 1281.

319. § 19. Hearing—Subpoenas.) For the purposes of this Act, the Director, or the hearing officer as hereinafter provided, has power to require by subpoena the attendance and testimony of witnesses, and the production of all documentary evidence relating to any matter under hearing pursuant to this Act, and shall issue such subpoenas at the request of an interested party. The hearing officer may sign subpoenas in the name of the Director.

The Director may, in his discretion, direct that any hearing pursuant to this Act, shall be held before a competent and qualified agent of the Director, whom the Director shall designate as the hearing officer in such matter. The Director and the hearing officer are hereby empowered to, and shall, administer oaths and affirmations to all witnesses appearing before them. The hearing officer, upon the conclusion of the hearing before him, shall certify the evidence to the Director.

Any Circuit Court of this State, within the jurisdiction of which such hearing is carried on, may, in case of contumacy, or refusal of a witness to obey a subpoena,



issue an order requiring such witness to appear before the Director, or the hearing officer, or to produce documentary evidence, or to give testimony touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. As amended by act approved July 17, 1959. L.1959, p. 1291.

320. § 20. Review under Administrative Review Act.) All final administrative decisions of the Director hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act", approved May 8, 1945, and all amendments and modifications thereof,[1] and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 1 of the "Administrative Review Act".[2] As amended by act approved July 17, 1959. L.1959, p. 1291

321. § 21. Notices.) Except as otherwise provided in this Act, whenever the Director is required to give notice to any applicant or licensee, such requirement shall be complied with if, within the time fixed herein, such notice shall be enclosed in an envelope plainly addressed to such applicant or licensee, at the address set forth in the application or license, United States postage fully prepaid, and deposited registered or certified in the United States mail. As amended by act approved July 17, 1959. L.1959, p. 1291.

322. § 22. Rules and regulations.) The Director may make and enforce such reasonable rules and regulations as are necessary for the enforcement and execution of this Act. As amended by act approved July 17, 1959. L. 1959, p. 1291.

323. § 23. Violations—Punishment.) Any person who violates any provision of this Act or any provision of the rules and regulations of the Director is guilty of a Class

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[1] Chapter 110, § 264 et seq.
[2] Chapter 110, § 264.

A misdemeanor. Amended by P.A. 77-2830, Art. 17, § 1, eff. Jan. 1, 1973.

[§ 24. Appropriation.]

[§ 25. Separability.]

324. § 26. Effective date. This Act shall take effect September 1, 1957.

## FOREIGN BANKING OFFICE ACT

AN ACT to permit foreign banking corporations to establish and maintain a single banking office in the central business district of Chicago. P.A. 78-346, eff. Oct. 1, 1973.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

501. Short title.] § 1. This Act may be cited as the "Foreign Banking Office Act".

502. Definitions.] § 2. As used in this Act unless the context otherwise requires, the words and phrases defined in Sections 2.01 through 2.07[1] have the meanings ascribed to them in those Sections.

502.01 Commissioner defined.] § 2.01 "Commissioner" means the Commissioner of Banks and Trust Companies.

502.02 State bank defined.] § 2.02 "State bank" means a banking corporation organized under the Illinois Banking Act.[1]

502.03 National Bank defined.] § 2.03 "National Bank" means a national banking association located in the State of Illinois.

502.04 Central business district of Chicago defined.] § 2.04 "Central business district of Chicago" means that part of the city of Chicago bounded by Lake Street on the

[1] Chapter 16½, § 502.01 to 502.07.

[1] Chapter 16½, § 102.



north, Van Buren Street and the south, Michigan Avenue on the east, and Canal Street on the west.

502.05 Foreign banking corporation defined.] § 2.05 "Foreign banking corporation" means a bank organized and operating under the laws of a country other than the United States of America and not directly or indirectly owned or controlled by United States citizens or by a corporation organized under the laws of the United States of America.

502.06 Banking office defined.] § 2.06 "Banking office" has the same meaning as "banking house" as defined in Section 2 of the Illinois Banking Act.[1]

502.07 Person defined.] § 2.07 "Person" means an individual, corporation, partnership, joint venture, trust, estate or incorporated association.

503. Necessity of certificate of authority—Qualifications—Rights and privileges—Duties—Supervision.] § 3. A foreign banking corporation, upon receipt of a certificate of authority from the Commissioner, may establish and maintain a single banking office in the central business district of Chicago and may conduct thereat a general banking business. No such foreign banking corporation is, however, entitled to a certificate of authority under this Act unless, under the laws of the country under which such foreign banking corporation was organized, a State bank and a national bank may be authorized to maintain a banking office which may engage in a general banking business or may be authorized to own all the shares (except for directors' qualifying shares) of a banking organization organized under the laws of such country.

Upon receipt of a certificate of authority under this Act, a foreign banking corporation may conduct its banking business in this State with the same, but no greater, rights and privileges as a State bank, and except as

[1] Chapter 16½, § 102.

otherwise provided in this Act, subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed under the Illinois Banking Act[1] upon a State bank. Any such banking office shall be maintained subject to supervision and examination by the Commissioner and such reports and examinations as are required of State banks under the Illinois Banking Act applicable to such banking office.

504. Application for certificate of authority—Contents —Forms—Findings required.] § 4. A foreign banking corporation, in order to procure a certificate of authority to establish and maintain a banking office in the central business district of Chicago and to conduct thereat a general banking business shall make application therefor to the Commissioner, which application shall set forth:

(a) the name of the corporation, together with the country under the laws of which it was organized;

(b) the date of its incorporation and the period of its duration;

(c) the address of its principal office in the country under the laws of which it was organized;

(d) the address of its proposed registered office in this State, and the name of its proposed registered agent in this State at such address;

(e) the names of other states and countries in which it is admitted or qualified to transact business;

(f) the names and respective addresses of its directors and principal officers;

(g) a statement containing such information as the Commissioner may require indicating that such foreign banking corporation is authorized to conduct a general banking business under the laws of the country of its organization, the nature of the business of such foreign

[1] Chapter 16½, § 101 et seq.



banking corporation and whether the requirement of the reciprocal provision of Section 3 of this Act can be met;

(h) a complete and detailed statement of its financial condition and the actual value of its assets, which must be at least $1,000,000 in excess of its liabilities as of a date within 120 days prior to the date of such application; and

(i) such additional information as may be necessary or appropriate in order to enable the Commissioner to determine whether such corporation is entitled to a certificate of authority.

Such application shall be made on forms prescribed and furnished by the Commissioner and shall be duly executed in duplicate by the foreign banking corporation by one or more of its principal officers.

## APPENDIX D

*(No. 54—November 7, 1949)*

COMMUNITY CURRENCY EXCHANGE—*exception from application of Act.* Person cashing checks for a fee or service charge while chiefly engaged in the business of selling tangible personal property at retail, who, only in the course of such business and only as an incident therto so cashes checks, is a person excepted from the operation of licensing and regulatory provisions of the Community Currency Exchange law.

STATUTES CONSTRUED—Paragraph 31, Chapter 16½, Illinois Revised Statutes 1949.

*Hon. John J. Bresee, State's Attorney, Champaign County, Urbana:*

This will acknowledge receipt of your recent communication with respect to the application of the provisions of the Community Currency Exchange Act to local retail business men in your community. Your letter reads as follows:

> "I would appreciate an opinion from you on an interpretation of a part of the Community Currency Exchange Act. Several local businessmen, with establishments near the University of Illinois campus, are engaged in commercial enterprises other than that of cashing checks, etc. As an incident to their selling personal property at retail they are called upon to cash checks, drafts, etc., in the ordinary course of business. These businessmen in turn are charged in their banking transaction for the depositing, clearing, etc., of those checks.
>
> "If, in the course of their business and only as an incident to the sale, they cash a check for the customer and charge the customer a nominal fee (such as five cents) to cover the cost later charged to them, would such action on their part constitute a violation of the



Community Currency Exchange Act (Chap. 16½, Par. 31, *et seq.*) so that a criminal charge should be filed?

"Some of these business establishments have indicated that they would be willing to apply for a license for the privilege of cashing checks under the Act if your opinion should be that their above related course of conduct is a violation of the law. They, however, then question Par. 38 of that chapter as to whether in the operation of their regular business they could, under that paragraph, obtain a license, because it would only be a side-line to the regular business of selling personal property.

"In other words, they find it necessary, in the course of their business, to cash checks and find that there is a charge to them for cashing these checks, and they do not wish to be charged criminally for passing that cost on to the one who wishes to cash the check. They are desirous of complying with the law, but do not understand how they could comply unless they set up a separate business, which is not a desirable procedure.

"I would appreciate your comments as to the criminal liability which may be attached to their operation."

The answer to your proposition, I believe, may be found in the language of Paragraph 31, of Chapter 16½ of the Illinois Revised Statutes 1949, cited in your letter. This paragraph is Section 1 of the Community Currency Exchange Act which reads as follows:

> "For the purpose of this Act: 'Community currency exchange' means any person, firm, association, partnership or corporation, except banks incorporated under the laws of this State and national banks organized pursuant to the laws of the United States, engaged in the *business* or *service of,* and providing facilities for, *cashing checks,* drafts, money orders or any other evidences of money acceptable to such community currency exchange, *for a fee or service charge, or other*

*consideration,* or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders, American Express Company money orders, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services.

" 'Auditor' means the Author of Public Accounts.

"Nothing in this Act shall be held to apply to any person, firm, association, partnership or corporation who is engaged primarily in the business of transporting for hire, bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value, and who only in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money directly for, or for the employees of and with the funds of and at a cost only to the person, firm, association, partnership or corporation for whom he or it is then actually transporting such bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value, pursuant to a written contract for such transportation and all incidents thereof, *nor shall it apply to any person, firm, association, partnership or corporation engaged in the business of selling tangible personal property at retail, who, only in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money.*" (Emphasis supplied.)

Construing Paragraph 31 as a whole, it is obvious that the exception contained in the last part of this paragraph refers to a person who, for a fee or service charge or other consideration, *cashes checks,* drafts, money orders or other evidences of money in the course of and only as an incident to the business of selling tangible personal property at retail. See: *McDougall* v. *Lueder,*



389 Ill. 141; *The People* v. *Thillens,* 400 Ill. 224; Sutherland Stat. Constr. 3rd Ed. Vol. 2, page 336.

The phrase "cashes checks, drafts, money orders or other evidences of money" as used in the excepting clause describes business transactions covered by the definition of a "community currency exchange" set forth in the first part of said paragraph. It is the providing of facilities for the business or service of any one or more of said types of transactions and the engaging in such business or service for fees, services charges or other consideration that Paragraph 31 includes within the meaning of a currency exchange, and declares the same, subject to license as provided by the terms of said Act.

The effect, therefore, of the excepting clause referred to, is to withdraw from the operation of the Community Currency Exchange Act the cashing of checks, drafts, money orders or any other evidences of money, for a fee, service charge or other consideration, when done only as an incident to the conduct of a business other than a community currency exchange, as specified in such exception.

By construing each part and section in connection with every other part and section of the Community Currency Exchange Act so as to produce a harmonious act, it will be observed that with reference to the cashing of checks, for a fee or service charge or other consideration, only as an incident to the business of selling tangible personal property at retail, such check cashing is not the type of business transactions coming within the purpose and intent of such act, to be licensed and regulated thereunder.

In view of the foregoing, it is my opinion that the class of business men described by you in your letter, appear not to be engaged in the business or service of cashing checks, or providing facilities for cashing checks for a fee, service charge or other consideration as contemplated by the terms of the Community Currency Exchange Act. In this connection it is assumed, of course, that such class of business men are well within the category of persons chiefly engaged in the business of selling tangible personal property at retail.

Supreme Court, U. S.
FILED
SEP 13 1975
MICHAEL RODAK, JR., CLERK

No. 74-1585

# In the Supreme Court of the United States

OCTOBER TERM, 1974

47TH AND STATE CURRENCY EXCHANGE, INC.,
an Illinois corporation,
*Plaintiff-Appellant,*

vs.

B. COLEMAN CORPORATION, an Illinois corporation,
*Defendant-Appellee.*

## MOTION OF APPELLANTS PURSUANT TO RULE 16 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES TO STRIKE MOTION OF APPELLEE TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS

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**vs.**

**B. COLEMAN CORPORATION, an Illinois corporation,**
*Defendant-Appellee.*

**MOTION OF APPELLANTS PURSUANT TO RULE 16 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES TO STRIKE MOTION OF APPELLEE TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS**

Now comes B. Coleman Corporation, an Illinois corporation, Defendant-Appellant by William Henning Rubin its attorney, and moves the court pursuant to Rule 16 of the Rules of the Supreme Court of the United States to Strike from the record the Motion of Appellee to dismiss the Appeal or in the alternative to affirm the judgment of the Supreme Court of Illinois.

That in support of this motion Defendant-Appellant says as follows:

1. That Rule 16 of the Rules of the Supreme Court of the United States specifically provides that the Appellee may file a printed motion to dismiss or motion to affirm within 30 days after receipt of the jurisdictional statement unless the time is enlarged by the court or a justice thereof, etc.

2. That the appeal was docketed in this court on the 16th day of June, 1975 and the motion to dismiss the appeal or to affirm the decision of the Supreme Court of Illinois was filed on the 25th day of August, 1975, without leave of court to enlarge the time within which it might file a motion to strike or to affirm.

That Appellees' motion to dismiss, goes to the merits of the case.

That this court has held in a number of cases that it will not entertain a motion to dismiss where the objection goes to the merits of the case and even to the jurisdiction. *Ill. Cent. Ry.* v. *Wirtz Adams,* 180 U.S. 410, 45 Sup. Ct. L. Ed. 410; also, 21 Sup. Ct. 251.

That Appellees have misrepresented the effect of the decision rendered by the Supreme Court of Illinois as affirming that Appellants are operating as a currency exchange and furthermore that the provisions of the Illinois Community Currency Exchange Act Ch. 16½ Par. 30 Ill. Rev. Stat. restricts Appellants from cashing checks in connection with the issuance of Money Orders, etc.

That an examination of the decision rendered by the Supreme Court of Illinois clearly indicates that the court made no findings; that it rendered no written opinions with the exception that it remanded the case to be tried on the



merits and further determined that the appellate court of Illinois erred in vacating the Temporary Restraining Order of Judge Covelli. That if the Supreme Court had made a determination that appellants were operating contrary to the Community Currency Exchange Act, quite obviously it would have made a determination that the Community Currency Exchange Act *bars* the operations of Appellant. Obviously, the Supreme Court could not do this since there was no evidentiary hearing, no evidence was presented and the entire proceeding commenced by the *illegal* issuance of a temporary injunction order without notice and without bond on the misrepresentation of plaintiff-appellee, that defendant-appellant was operating a currency exchange. The Chancellor Judge Covelli relied on the false affidavits of the Appellee that Appellant was operating a currency exchange without a license. That appellee's counsel on page two and three of its Motion to Dismiss attempts to justify the original issuance of the Ex Parte Injunction by stating that it was done on affidavit or verified complaint. On page three counsel says: "an injunction can only be granted by a judge and a bond is always required of private litigant. Ill. Rev. Stat., 1973, Ch. 69, Section 9. However, counsel ignores the fact that Appellee never posted a bond and it was only after Appellant moved to vacate the temporary injunction order that, an order was entered vacating the temporary injunction order, Appellee was required to post a bond and then only a *Temporary Restraining Order was issued,* and the amount of an Appeal Bond set at $1,000.00.

That the examination of the brief of Appellant further reflects that Appellants perfected an appeal pursuant to 28 U.S.C., Sec. 1257 from the order entered on the 29th day of January 1975 vacating the Stay Order of the appellate court for the First District and from the order entered

May 14, 1975 denying Appellant's Motion to Recall the Mandate issued April 4, 1975 and to correct the language of the mandate to conform to the Order of January 29, 1975, pursuant to Ill. Rev. Stat. 1971, Ch. 69, Sec. 3, and 3-1 that the duration of a temporary Restraining Order is only 10 days.

If the Supreme Court of Illinois was of the opinion that the business conducted by Appellant was contrary to the law, it would not have remanded the case to be heard on the merits. Under these circumstances the issuance of a temporary restraining order cannot possibly be construed to imply a temporary injunction which would cause appellant to entirely suspend their operations and cease doing business.

This is especially true since the language of the Sale of Exchange Act specifically recites that until the passage of that Act the sellers of exchange at multi-locations (sellers of Travelers Express money orders and American Express travelers checks) were not regulated.

Appellee's forcing appellant into a "squeeze play" operation by obtaining a temporary injunction, which was subsequently vacated, and a temporary restraining order, was never the intention of the framers of the injunction act and the State of Illinois. Appellants are entitled to relief against such oppressive conduct and a court decision that in effect overrules all the previous decisions or temporary restraining orders.

That Appellees do not deny that there has been no decision in the State of Illinois rendered that the duration of a temporary Restraining Order extends beyond the period of ten days and that it does not automatically die or cease to have any effect at the end of the ten day period unless there is language to the contrary.



That is the entire basis for appeal to this court is not a determination as to whether or not the Community Currency Exchange Act is valid, is constitutional, is unconstitutional, or a restriction of Interstate Commerce or whether the Sale of Exchange Act covering the Sale of Exchange at multi locations is governed by the Community Currency Exchange Act or stands on its own feet. (Sale of Exchange Act specifically recites that until its passage there was no control of the issuers of exchange at multi locations.) In confirmation of appellant's contentions (See Affidavit of Appellant Attorney).

The attorney for the Appellant was the draftsman of the temporary Restraining Order, and the only reason that no time limit was inserted was Counsel for Appellant was aware of the provisions of Chapter 66, Ill. Rev. Stat. 1971, Sec. 3, and 3-1, the Injunction Act of the State of Illinois. That the attorney for the Appellant being in practice for over 37 years relied on the provisions of that Act and expected that in accordance with the case law of the State of Illinois there was no possibility of the *temporary restraining* order becoming a *temporary injunction.*

That counsel for the Appellee completely ignores the case law covering temporary restraining orders pursuant to the provisions of the 1967 revision of the Injunction Act, Ill. Rev. Stat. 1971, Ch. 69, Sec. 3 and 3-1.

Counsel for Appellants has heretofore cited the following cases:

*Paddington Corp.* v. *Foremost Sales, Inc.,* 13 Ill. App. 3rd 175.

*Bohn Aluminum & Brass Co.* v. *Barker,* 3 Ill. App. 3d 600 (1972).

*Buckingham Corp.* v. *Vesolowski,* 17 Ill. App. 3d 61.

That the situation here is unique in that the Supreme Court of Illinois entered an order on January 29, 1975 (See Appendix 1-a) that the Appellate court erred in granting a stay order and vacated it.

That the clerk of the Supreme Court on the other hand in issuing the mandate inserted the language:

> "Therefore, it is considered by the Court that the issuance of the restraining order by the Circuit Court of Cook County, aforesaid, Reaffirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error, and this cause be remanded to the Circuit Court of Cook County for a hearing on the merits." (See Appendix 2a and 3a "MOTION TO RECALL MANDATE AND TO CORRECT MANDATE TO CONFORM TO DECISION OF THE COURT.")

That when Appellant found that the clerk of the Supreme Court had taken it upon himself to construe the language of the Court Order of January 29, 1975 when the mandate was issued it was necessary as well as advisable to file the *Motion to Recall the Mandate* and to correct the language of the mandate to conform to the decision of the court rendered January 29, 1975.

That in support of this argument to modify the language contained in the mandate to conform to the decision of the Illinois Supreme court rendered January 29, 1975 the affidavit of appellant's counsel is hereto attached. (see Appendix p. App. 3) The affidavit confirms that counsel for Appellant spoke to Clell Woods, Clerk of the Supreme Court of Illinois and interrogated him as to why the language in the mandate was not the exact language as contained in the order of January 29, 1975. The answer of the clerk was that he assumed that if the stay order of the Appellate Court was issued in error the temporary restraining order was in full force and effect. That if the clerk of the court is to assume a position of authority to make an interpretation as to the language to be inserted in a mandate it will be a new era in judicial circles of the *clerk vs. the court*. That Appellees are attempting to argue the merits of the case which is barred in a motion to strike and dismiss.



That the Supreme Court of Illinois made no determination as to the merits of Appellant's rights and therefore remanded the cause for *a determination on the merits.* On the other hand if Appellants do not have the protection afforded to them by the provisions of the Injunction Act of the State of Illinois which specifically covers temporary restraining orders and limits the life thereof to ten days it must be admitted that defendants are deprived of their rights under the First and Fourteenth Amendments of the Constitution of the United States.

The rights of the Supreme Court of the United States pursuant to 28 U.S.C. Sec. 1257 to determine the validity of temporary restraining order where it applied a more rigorous standard is the case of *Organization for a Better Austin* v. *O'Keefe,* 402 U.S. 415, 29 L. Ed. 2nd.

That it is the established rule of this Court that a motion to dismiss can not be predicated on the merits of the case, 21 Sup. Ct. 251, 180 U.S. 28, 45 L. Ed. 410, *Illinois Central Railroad* v. *Wirtz Adams,* 45 Sup. Ct. L. Ed. 410, 180 U.S. 410.

That the entire motion of Appellee to dismiss when examined carefully discloses that it is an attempt to evade that well established principle that the *merits of the case can not be discussed in a motion to dismiss.*

That the only purpose of Appellees in filing an untimely motion to dismiss (60 days after Appellants jurisdictional statement) is to get into the record Appellees contention that Appellants are operating a currency exchange.

Appellees can not base their motion to dismiss on contentions since no evidence was presented, no testimony was taken and the court is required to rely on the "bald" statements that Appellees are operating a currency exchange contained in a complaint that was filed without the issuance of summons or notice to Appellants and Appellants only became aware of the proceedings and entry of the original Temporary Injunction Order when the sheriff served the writ.

That Appellees not only attempt to argue the merits of the case but attempt to characterize the operations of Appellants by again making the bald statement in, unsupported by evidence of Appellants' operations, their motion. (p. 15) Appellee can not make this statement since no evidence was adduced and no evidentiary hearing was held.

> "Here, the B. Coleman Corporation is not engaged in the retail sale of merchandise though it belatedly obtained a Retail Occupation Tax Number, and purportedly now is in the business of selling an occasional bicycle at retail."

Appellees are again trying to confuse the issue of the basis of the appeal from the Illinois Supreme Court pursuant to 28 U.S.C. Sec. 1257.

The mandate of the Illinois Supreme Court as it affects Appellants and its effect of modifying the Illinois Injunction Act Ch. 69, Sec. 3 and 3-1 of the Ill. Rev. Stat. 1971 is repugnant to the due process clause of the Constitution of the United States placing Appellants in extreme jeopardy of going to jail or being fined.



The Injunction statute of the State of Illinois prescribes the rules that govern the issuance of Temporary Restraining orders and no one is required at his peril of life, liberty or property to speculate as to the interpretation of a statute such as the Injunction Act. In *Lanzetta* v. *New Jersey,* 306 U.S. 451, 59 Sup. Ct. 618.

The Injunction statute of the State of Illinois governing Temporary Restraining orders is not *"bad"* it is merely the untimely issuance of "faulty" language in the mandate as the result of the error of the clerk of the Supreme Court assuming that the temporary restraining order was in full force and effect. Appellees have made it a point to avoid discussing the Injunction Act of the State of Illinois which is similar to the provision of the Federal Injunction Act.

The restraining order rests on a disputed question of fact. *Organization for a Better Austin* v. *O'Keefe,* 402 U.S. 415, 29 L. Ed. 2nd.

When a classification touches on a fundamental constitutional right, the constitutionality of the classification must be judged by the stricter standard of whether it promotes a compelling state interest. If it does not, it violates the equal protection clause of the 14th Amendment. *Shapiro* v. *Thompson,* 39 US 618, 638, 22 L. ed. 2d 600—89 Sup. Ct. 1322.

If this Court determines that a petition for certiorari should have been filed in lieu of an appeal, the time for filing a petition to the Supreme Court for a writ of certiorari to review a lower court decision is governed by Rule 22 of the Rules of the Supreme Court:

> "The Supreme Court has said that Rule 22 is not jurisdictional or mandatory and that it may be waived under proper circumstances, at least where no jurisdictional statute is involved."

*Durham* v. *United States,* 28 L. Ed. 2nd 960.

Appeals to the Supreme Court are a matter of right, while a petition for certiorari is a matter of discretion. *Durham* v. *United States,* 28 L. Ed. 2nd 200. *Mason* v. *Northwestern Mutual Life Ins.,* 106 U.S. 163, 1 Sup. Ct. 165, 27 L. Ed. 129. See *Taglianetti* v *United States,* 22 L. Ed. 302. Time limitation is not jurisdictional.

## CONCLUSION

Appellants filed this motion in reply to appellees' motion to dismiss in order that the court may have the proper perspective, since the Appellees base their argument strictly on the question of the merits of the case which is contrary to the rules of this Court. Appellants urge this Court to grant the appeal since it is placed in jeopardy of losing its business and subject to a fine and possibly even a jail sentence if the temporary restraining order is construed to be a permanent injunction.

The fact that the trial court set the appeal bond at $1,000 and directed the appellants to seek a stay order in the Appellate Court, for reasons best known to the trial judge, is more than an indication that the trial court felt it was only a temporary restraining order and not a permanent injunction.

Pursuant to the Injunction Act of the State of Illinois, the trial court was required to hold an evidentiary hearing on the merits of appellants' cause of action. Appellants had filed a motion to strike the proceedings, which was never heard. The fact that the Supreme Court remanded



the case for hearing on the merits further confirms that the Court was not convinced that appellants were acting in violation of the statute of the State of Illinois.

Appellants delayed the filing of the appeal since the Clerk of the Supreme Court of Illinois suggested that a motion be made to recall the mandate and that the mandate conform to the language of the order of the Supreme Court. This made the filing of the notice of appeal to the Supreme Court of the United States a timely filing, pursuant to 28 U.S.C., Section 1257.

In support thereof the Appellants urge this Court to deny Appellees' motion and to grant the appeal.

Respectfully submitted,

WILLIAM HENNING RUBIN
*Attorney for*
*B. Coleman Corporation,*
*Defendant-Appellant*

188 W. Randolph St.
Chicago, Illinois 60601
263-6780

# APPENDIX

## APPENDIX A

### MOTION TO RECALL MANDATE AND TO CORRECT MANDATE TO CONFORM TO DECISION OF THE COURT

Now comes B. Coleman Corporation, deefndant-appellee, and moves the Court that the mandate issued by this Court be recalled and that the mandate be revised to conform to the decision of this Court.

That in support of this motion, appellee states as follows:

1. That a decision was rendered by this Court that the Appellate Court erred in granting the Stay Order and the cause was remanded to the Circuit Court for a hearing on the merits.

2. That during oral argument the justices of the Supreme Court suggested that the Appellate Court erred in vacating the restraining order of the Trial Court since it was a temporary restraining order that terminated at the end of the 10-day period.

3. That appellee filed a motion to clarify or reconsider the decision of this Court in order that all the parties and the Trial Court would be further informed as to the basis for the Court's decision, but that motion was denied.

4. That the mandate issued contains the following language:

> "Therefore, it is considered by the Court that the issuance of the restraining order by the Circuit Court of Cook County, aforesaid, Reaffirmed In All Things And Stand In Full Force And Effect, notwithstand-

ing the said matter and things therein assigned for error, and this cause be remanded to the Circuit Court of Cook County for a hearing on the merits."

5. That the failure of the mandate to conform to the order places the appellee in jeopardy.

6. That the language of the mandate is contrary to the case law that a temporary restraining order terminates at the end of the 10-day period.

Wherefore, appellee moves:

A. That the mandate issued April 5, 1975 by this Court be recalled.

B. That the language of the mandate be changed, altered or modified to conform to the order entered January 29, 1975.

C. That appellee may have such further relief as this Court deems proper.

/s/ WILLIAM HENNING RUBIN
William Henning Rubin
*Attorney for Defendant-Appellee*



## APPENDIX B

STATE OF ILLINOIS
COUNTY OF COOK

AFFIDAVIT

WILLIAM HENNING RUBIN, counsel for B. COLEMAN CORPORATION, defendant-appellant, on oath, says:

1. Upon receipt of a copy of the mandate from the Clerk of the Supreme Court of Illinois he contacted Clell Woods, Clerk of the Court, and interrogated him as to why the language of the mandate did not conform to the order of the Supreme Court rendered January 29, 1975, and the statement of the clerk was "I assumed that since the order entered January 29, 1975 recited that the Appellate Court erred in granting the stay order that the stay order was in full force and effect irrespective of the oral argument that questioned the stay order since a temporary injunction order dies at the end of the 10 day period.

Further affiant sayeth naught.

*/s/ William Henning Rubin*

SUBSCRIBED & SWORN to before
me this 16 day of September, 1975.
*/s/ Lydia Rojas*
Notary Public

(SEAL)

## APPENDIX C

### SALE OF EXCHANGE ACT

AN ACT in relation to the definition, licensing and regulation of the business of selling or issuing checks, drafts, money orders or other instruments for the transmission or payment of money or credit at multiple locations through agents, subagents or representatives, as a service or for a fee or other consideration, to provide for the administration of this Act, to provide penalties for the violation thereof and to make an appropriation therefor. Approved July 8, 1957. L. 1957, p. 1749.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

301. §1. Policy of act. The General Assembly has found and declares:

that checks, drafts and money orders are bills of exchange used in the transmission or payment of money or credit;

that such instruments are widely used by the public as a process of settling accounts or debts;

that sellers and issuers of such instruments receive, in the aggregate, large sums of money from the public;

that the public suffers when any default occurs in the payment of such instruments;

that there is a high degree of public interest in the integrity, experience and financial responsibility and reliability of those engaged in the various types of businesses dealing in such instruments which has long been recognized by the General Assembly by the adoption of laws regulating such businesses;

that the business of selling or issuing such instruments at multiple locations through agents, subagents, or repre-



sentatives is a business which affects the public interest and which is not presently subject to regulation, although businesses which sell or issue such instruments at a single location are licensed and regulated under "An Act in relation to the regulation of community currency exchanges and the operators and employees thereof, and to make an appropriation therefor" approved June 30, 1943, as amended;[1]

[1] Section 31 et seq. of this chapter.